

**LOCAL BANKRUPTCY RULES  
FOR THE  
NORTHERN DISTRICT OF NEW YORK**

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## **RULE 1001-1: SHORT TITLE - APPLICABILITY**

- (a) **Short Title.** These local rules shall be known as the Local Bankruptcy Rules for the Northern District of New York and may be referred to and cited in papers filed in this court as “Local Bankruptcy Rule \_\_\_\_\_ - \_\_\_\_” or “LBR\_\_\_\_\_ - \_\_\_\_.”
- (b) **Applicability.** The Local Bankruptcy Rules supplement the Federal Rules of Bankruptcy Procedure. Except for those cases filed in Poughkeepsie by residents of Columbia, Green and Ulster counties, these Local Bankruptcy Rules shall govern all proceedings in bankruptcy cases hereafter filed in the Northern District of New York. As to Northern District cases pending by debtors who are residents of Columbia, Green and Ulster counties which were previously assigned to the judge sitting in Poughkeepsie, the Local Bankruptcy Rules for the Southern District of New York shall govern.

### **Comment**

Under the authority of FRBP 9029, the district court may make and amend rules of practice and procedure not inconsistent with the Federal Rules of Bankruptcy Procedure and which do not prohibit or limit the use of the official forms.

These Local Bankruptcy Rules, effective ~~January 1, 1998~~ **July 15, 2005** supersede and rescind the Local Bankruptcy Rules adopted October 27, 1994 **and January 1, 1998**. A numbering system is employed which corresponds each rule to the most closely associated Federal Rule of Bankruptcy Procedure, in conformity with the Uniform Numbering System prescribed by the Judicial Conference of the United States.

There may be administrative orders issued by a judge which may have the effect of modifying or abrogating one or more of these Local Bankruptcy Rules. A list of administrative orders will be available on the court's internet web site which can be located at <http://www.nynb.uscourts.gov>.

## **RULE 1002-1: PETITION - GENERAL**

- (a) **Electronic Case Filing and Signatures.** Under Electronic Case Filing (ECF) and the Case Management (CM) system, original paper documents are no longer routinely accepted for filing. The requirement that petitions, verifications, resolutions, declarations, etc. be signed is met by an electronic signature. An electronic signature is considered to be the original signature upon the filed documents for all purposes under the Bankruptcy Code, relevant federal and state statutes, and applicable federal rules. Pro Se debtors will be permitted to file petitions and other documents conventionally.
- (b) **Where to File.** Petitions may be filed electronically with the clerk or in any office of the clerk. Attorney filers may also use public scanners and computers located at the Public Intake Counter.
- (c) **Number of Copies to be Filed.** The filing of multiple copies of petitions, lists, schedules and statements is not required. ~~Petitions shall be filed in numbers mandated by chapter within Local Bankruptcy Rule 1007-1 for lists, schedules and statements.~~
- (d) **Corporate Resolution/~~LLC Authority.~~** A voluntary petition filed by a corporation shall be accompanied by a copy of the corporate resolution or other appropriate authorization, duly attested to, authorizing such filing.
- (e) **LLC Authority.** A voluntary petition filed by a limited liability company shall be accompanied by a copy of the appropriate authorization, duly attested to, authorizing such filing.
- (f) **Deficient Petitions and Papers - Notice of Deficient Filing.** The Clerk can issue a notice specifying deficiencies.  
~~Noncompliance. The failure to comply with the requirements of this rule may subject the case to dismissal.~~
- (g) **Dismissal of Petition.** The failure to comply with the requirements of this rule may subject the case to dismissal. The petition may be dismissed/stricken without a hearing if:
- (1) the petition is not signed by the debtor(s);
  - (2) the party filing the petition does not pay the filing fee with the petition or does not file an application to pay filing fees in installments, if eligible to do so;
  - (3) the debtor does not file the master mailing matrix with the petition;
  - (4) a voluntary petition is filed without the debtor's social security number being provided.

### **Comment**

Although FRBP 5005(a)(1) requires the clerk to accept papers for filing which are not in proper form, subsection ~~(d)~~ (g) of this **local** rule makes clear that the court may take appropriate action to enforce this rule.

#### **RULE 1003-1: INVOLUNTARY PETITIONS [FILING REQUIREMENTS]**

- (a) **Number of Copies.** ~~An involuntary petition shall be filed in the same number required by Local Bankruptcy Rule 1007-1 for the filing of lists, schedules and statements.~~ The filing of multiple copies of petitions, lists, schedules and statements is not required.
- (b) **Matrix.** An involuntary petition shall be accompanied by a matrix, in proper form as set forth in Local Bankruptcy Rule 1007-2(a), containing the name and address, including zip codes and any post office addresses of ~~the United States trustee and~~ all petitioning creditors, any attorneys for petitioning creditors and other parties in interest.
- (c) **Certification of Matrix.** The matrix required by subsection (b) shall be certified in the manner directed in Local Bankruptcy Rule 1007-2~~(c)~~(f).
- (d) **Noncompliance.** The failure to comply with the requirements of this rule may subject the case to dismissal.

### Comment

Although FRBP 5005(a)(1) requires the clerk to accept papers for filing which are not in proper form, subsection (d) of this rule makes clear that the court may take appropriate action to enforce this rule.

## RULE 1004-1: PETITION - PARTNERSHIP

- (a) **Partnership Declaration/~~LLP Authority~~.** A voluntary petition filed by a partnership shall be accompanied by appropriate authorization, duly attested to by all general partners, authorizing such filing.
- (b) **~~LLP Authority~~.** A voluntary petition filed by a limited liability partnership shall be accompanied by a copy of the appropriate authorization, duly attested to, authorizing such filing.
- (c) **Noncompliance.** The failure to comply with the requirements of this rule may subject the case to dismissal.

### Comment

This rule should be read in conjunction with FRBP 1004~~(a)~~, which permits a voluntary petition to be signed by less than all general partners, if all general partners consent.

Although FRBP 5005(a)(1) requires the clerk to accept papers for filing which are not in proper form, subsection ~~(b)~~ ( c ) of this **local** rule makes clear that the court may take appropriate action to enforce this rule.

**RULE1006-1: FEES - ADVANCE PAYMENT OR ADVANCE PERMISSION TO  
CHARGE ON FILE CREDIT CARD**



The Clerk is not required to render any service for which a fee is legally collectible unless the fee for the particular service is paid in advance or an on file credit card is available. The use of any on file credit card is only for the purpose of making payment for electronically filed documents.

**RULE ~~1006-1~~. RULE 1006-2 FEES - INSTALLMENT PAYMENTS**

Unless otherwise ordered by the court, the clerk shall not be required to render any service

for which a fee is prescribed, either by statute or by the Judicial Conference of the United States, including the acceptance of a document for filing, unless the fee for that service is paid in advance, or an order is granted pursuant to FRBP 1006(b)(1) to pay the filing fee for a voluntary petition by an individual in installments.

### **Comment**

Filing fees for the commencement of a case under the respective chapters of the Bankruptcy Code are set forth in 28 U.S.C. §1930(a). Filing fees for the commencement of an adversary proceeding are authorized by 28 U.S.C. §1930(b) and set forth in the Judicial Conference Schedule of Fees.

In this district, petitioners are not allowed to proceed in forma pauperis when filing bankruptcy petitions. 28 U.S.C. §1930(a).

### **~~RULE 1007-1. PETITIONS, LISTS, SCHEDULES & STATEMENTS~~**

~~Pro Se filers will be permitted to file all documents conventionally. In special~~

~~emergency situations, attorney filers may be permitted to file documents conventionally. Attorney filers may also use public scanners located at the Public Intake Counter. Recognized emergency situations include inability to access attorney's ISP, inability to access CM/ECF server, and catastrophic disaster at attorney's office.~~

~~In all cases filed under chapter 7, chapter 12 or chapter 13, an original and four copies of the **petitions**, lists, schedules and statements and amendments thereto shall be filed.~~

~~In cases filed **conventionally** under chapter 9 or chapter 11 of the Code, an original and six copies of the petition, lists, schedules, statements and amendments thereto shall be filed~~

## **RULE 1007 - 1: STATEMENT OF SOCIAL SECURITY NUMBER**

- (a) **Verified Statement of Full Social Security Number.** FRPB 1007(f) requires the debtor to submit a verified statement (Official Form B21) of his or her full social security number. The statement is not filed in the case and does not become a part of the court record or the public record.
- (b) **Submission with Conventionally Filed Petitions.** When petitions are filed conventionally with the court the debtor is required to submit the original signed statement to the court contemporaneously with the filing of the petition.
- (c) **Submission with Electronically Filed Petitions.** When petitions are filed electronically, the debtor is required to sign the statement of full social security number. The debtor's attorney is required to retain the original with his or her records. The form is not to be filed electronically with the petition.
- (d) **Amendment of Social Security Number.** When the debtor's attorney files a petition electronically and incorrectly enters the debtor's social security number into the ECF system, the debtor's attorney must take steps to correct the error. The attorney shall:

  - (1) Submit, in paper, to the court an Amended Statement of Social Security number indicating the full and correct social security Number. Indicate both the incorrect social security number and the corrected social security number.
  - (2) Serve all creditors, the Chapter 7 or 13 trustee, and the U.S. Trustee with the amended statement.
  - (3) File with the court a completed certificate of service by mail, certifying service of the amended statement upon all creditors, the Chapter 7 or 13 trustee and the U.S. Trustee. Attach to the certificate of service a list of all creditors, their names and addresses as well as the Chapter 7 or 13 trustee name and address. The certificate of service can be filed electronically.
  - (4) If the error only affects the last four digits of the social security number, in addition to submitting an amended statement of social security number with the court, also file an amended petition with the court showing the corrected last four digits of the social security number. The amendment is to be noticed and served as indicated in steps 2 and 3 above. The amended petition can be filed electronically.

## **RULE 1007-2: MAILING - LIST OR MATRIX**

(a) **Matrix.** Any list of creditors, schedule of liabilities or list of equity security holders required to be filed pursuant to FRBP 1007 shall be accompanied by a matrix containing the name and address of ~~the United States trustee and~~ all creditors and other parties in interest. Each such matrix shall be submitted in proper form ~~and typeface~~ compatible with the ~~optical scanner used in conjunction with the~~ court's **automated case management system (BANCAP) (CM/ECF)**. The two letter state identifier as prescribed by the United States Post Office shall be used with no periods included. Zip codes **MUST** appear on the same line as the city/state.

(b) **Reliance Upon the Matrix.** The clerk may rely upon the matrix as filed, and any amendments thereto, for purposes of providing notice as required by these Local Bankruptcy Rules and the Federal Rules of Bankruptcy Procedure.

(c) **Matrix Format.** The matrix must be formatted and addressed as follows. Adherence to this format will greatly reduce the number of noticing errors. Each creditor entry must consist of no more than five total lines.

- Complete address, clearly typed
- Left justified in a single column down the left edge of the paper
- Each creditor's address must be single spaced
- Creditor's city, state and zip code must all appear together on the final line of each creditor's address
- Do not include account numbers in any part of the address
- Single space required between each address
- State must appear in a two letter, capitalized format
- Each line must contain no more than 40 characters including spaces and punctuation.

(d) **Examples of Proper Format for Matrix**

MBNA  
P O Box 15019  
Wilmington, DE 19886-5019

Wells Fargo Financial  
5 Gateway Drive  
Suite 5000  
Columbia, MD 21046

(e) **Matrix of Twenty Largest Unsecured Creditors.** The list of the twenty largest unsecured creditors filed pursuant to FRBP 1007(d) shall be accompanied by a separate matrix, in proper form, as set forth in subsection (a) above, listing only those unsecured creditors.

- (f) **Certification of Matrix.** Whenever a matrix is required to be submitted pursuant to subsections (a) or ~~(b)~~ (e) of this rule, subsection (b) of Local Bankruptcy Rule 1003-1, subsection (d) of Local Bankruptcy Rule 1009-1, subsection (c) of Local Bankruptcy Rule 1015-1, subsection (d) of Local Bankruptcy Rule 1019-1 or as otherwise required by the court, the proponent or attorney for the proponent must certify that the matrix contains the names, addresses and zip codes of all creditors and entities which appear in the schedules of liabilities, list of creditors, list of equity security holders, list of twenty largest unsecured creditors or amendments thereto. The certification shall conform substantively to the following:

### CERTIFICATION OF MAILING MATRIX

I (we), \_\_\_\_\_, the attorney for the debtor/petitioner (or, if appropriate, the debtor(s) or petitioners(s)) hereby certify under the penalties of perjury that the above/attached mailing matrix has been compared to and contains the names, addresses and zip codes of all persons and entities, as they appear on the schedules of liabilities/list of creditors/list of equity security holders, or any amendment thereto filed herewith.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Debtor/Petitioner  
(Debtor(s)/Petitioner(s))

- (g) **Noncompliance.** The failure to comply with the requirements of this rule may subject the case to dismissal.

### Comment

This rule requires that matrices be compatible with the ~~optical scanner used with the~~ court's automated case management system (CM/ECF). ~~(BANCAP). Typefaces compatible with BANCAP include Courier 10, prestige Elite and Letter Gothic. A BANCAP information packet is available from the Clerk's Office.~~ The creditor matrix is to be prepared with word processing software or bankruptcy preparation software, in a single column format with a one inch left margin (not centered). Creditors are single spaced with a double space separating one creditor from the next. The city, state and zip code must all be on the last line. The creditor matrix file is saved as an ASCII DOS Text (.txt) file and uploaded to the *System* per the User Manual.

Refer to Local Bankruptcy Rule 9034 - 1 ( c ) for the addresses of the United States trustee.

Although FRBP 5005(a)(1) requires the clerk to accept papers for filing which are not in proper form, subsection ~~(d)~~ (g) of this **local** rule makes clear that the court may take appropriate action to enforce this rule.

**RULE 1007-3: NOTICE TO CREDITORS OMITTED FROM OR INCORRECTLY LISTED ON MASTER MAILING MATRIX**

If a debtor files schedules or an amended mailing matrix after filing the petition, and if the debtor's schedules or a amended mailing matrix include one or more creditors that were not included, or were listed incorrectly on the debtor's master mailing matrix filed with the petition, a debtor must comply with the following procedures:

- (a) **Notice of Amendment to Add Creditors.** If a debtor adds a creditor to the case or corrects the name or address of a creditor by amending either the schedules, the list of creditors or matrix previously filed, the debtor must serve upon that creditor copies of the following:
- (1) the amendment;
  - (2) copy of the original Notice for Meeting of Creditors;
  - (3) Statement of Social Security Number (Official Bankruptcy Form B21);
  - (4) any matters previously noticed by the clerk;
  - (5) a proof of claim form, if applicable;
  - (6) any other documents filed in the case which affects the rights of the creditor;
  - (7) a copy of each order that establishes or extends a bar date for claims or for complaints to determine the dischargeability of certain debts or to object to the discharge of the debtor.
- (b) **Certificate of compliance.** With the schedules and amended mailing matrix, the debtor must file a certificate of compliance with this Rule, together with a dated and clearly titled amended mailing matrix that lists only the names and correct mailing addresses of each newly scheduled creditor.

**CERTIFICATION OF COMPLIANCE WITH LBR 1007-3**

I (we) \_\_\_\_\_, the attorney for the debtor/petitioner (or if appropriate, the debtor(s) or petitioners(s) hereby certify under the penalties of perjury that on date \_\_\_\_\_, schedules or an amended mailing matrix were filed.

The amended mailing matrix, which is clearly titled **AMENDED** matrix lists *only* the names and correct mailing address of each newly scheduled creditor or the corrected names and corrected mailing address of each creditor who was listed incorrectly on the master mailing matrix filed with the petition.

I further certify that newly listed creditors and/or corrected creditors have been noticed as required by LBR 1007-3(a).

Dated: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Debtor(s)/Petitioner(s)

**RULE 1009-1: AMENDMENTS TO LISTS, SCHEDULES , ~~&~~ STATEMENTS,  
& MAILING MATRICES**

- (a) **Caption.** Each amendment to the petition, lists, schedules, statements and mailing matrices shall contain a caption complying with FRBP 1005 and FRBP 9004(b) and include the word "AMENDED" in the designation of the character of the paper.
- (b) **List of Creditors and Schedules of Liabilities.** Amendments to the list of creditors and schedules of liabilities shall include only the additional creditors.
- (c) **Schedules of Assets and Liabilities.** Any amendment to the schedules of assets and liabilities which affects the amount claimed shall be totaled on both the amended schedule(s) as well as on the amended summary of schedules.
- (d) **Mailing Matrix.** Any amendment to the schedules of liabilities or list of creditors which adds a party not previously listed shall include an amended, certified mailing matrix, listing, without duplication, only the additional creditor(s) with complete mailing address(es).
- (e) **Amended List of Creditors.** If the petition is filed with a list of debtor's creditors and their addresses in lieu of completed schedules as permitted by FRBP 1007©), and thereafter, the debtor includes an additional creditor in the completed schedules "D", "E" or "F" who was not previously included in the original list of creditors, it shall be treated as an amendment and it shall be incumbent upon the debtor to file an amended list of creditors.
- (f) **Notice of Amendments.** In the event the petition, lists, schedules, statements **or mailing matrices** are amended pursuant to FRBP 1009, the debtor shall forthwith serve notice of such amendment upon the United States trustee , **case trustee**, and any entity affected thereby, and file a certificate of service reflecting the same.
- (g) **Notice of Amendment to Add Creditors.** If a debtor adds a creditor to the case by amending either the schedules, the list of creditors or matrix previously filed, the debtor must serve upon that creditor copies of the following:
  - (1) the amendment;
  - (2) Notice for Meeting of Creditors;
  - (3) Statement of Social Security Number (Official Bankruptcy Form B21);
  - (4) any matters previously noticed by the clerk;
  - (5) a proof of claim form, if applicable;
  - (6) any other documents filed in the case which affects the rights of the creditor.
- (h) **Certificate of Service.** Upon filing an amendment, a certificate reflecting service of notice of the amendment shall be filed simultaneously with the clerk and any trustee appointed in the case.
- (I) **Amendment to Claim of Exemption.** An amendment to a claim of exemption pursuant to FRBP 4003(a) shall be filed and served by the debtor or dependent of the debtor on the



trustee, the United States trustee and all creditors. The certificate of service required by subsection ~~(g)~~ (h) of this rule shall be filed with the amendment to claim of exemption.

- (j) **Filing Fees.** The fee for amending a list or schedule, required by 28 U.S.C. Sec. 1930(b) and the appendix, must be paid at the time of the filing of the amendment.

### **Comment**

Amendments shall be filed in the form prescribed in Local Bankruptcy Rule 9004-1 and in accordance with Local Bankruptcy Rules 1007-1 and 1007-2.

**RULE 1011-1: RESPONSIVE PLEADING - ~~CONSENT TO INVOLUNTARY~~  
PETITION**

A consent to an involuntary petition filed against a corporation, limited liability company or limited liability partnership shall be accompanied by a copy of the corporate resolution or other appropriate authorization, duly attested to, authorizing such consent.

A consent to an involuntary petition filed against a partnership shall be accompanied by appropriate authorization, duly attested to by all general partners, authorizing such consent.

**RULE 1014-1: INTERDISTRICT TRANSFER OF CASES OR PROCEEDINGS  
BETWEEN DISTRICTS**

After the expiration of ten days from the date of entry of an order transferring a case or

proceeding from this district to another district, the clerk shall promptly mail to the court to which the case is transferred: (1) certified copies of the docket and order of transfer and (2) the originals of all other papers on file in the case or proceeding.

If the documents in a transferred case or proceeding are only available in electronic format in the CM/ECF system, the district receiving a transferred case or proceeding from the Northern District of New York will be directed to obtain the required documents from PACER.

### **Comment**

Transfer of cases (reassignment) between judges within the district is governed by Local Bankruptcy Rule 1073-1~~(b)~~(d).

### **RULE 1015-1: JOINT ADMINISTRATION AND ~~SUBSTANTIVE~~ CONSOLIDATION**

**(a) Motion.** Unless otherwise ordered by the court, motions for joint administration or

consolidation shall be presented in each of the subject cases, shall be served on all creditors and parties in interest and shall designate one of the subject cases as the main case.

- (b) **Husband and Wife Joint Cases.** In all cases filed by a husband and wife under 11 U.S.C. §302, the court will presume joint administration of the case and, in an asset case, the consolidation of the assets and liabilities shall be combined in a single pool to pay creditors unless and until a motion is made by a party in interest to terminate the consolidation, which motion shall be made returnable prior to or at the final hearing. At the request of one or both of the joint debtors, and upon payment of the required fee, the joint bankruptcy case may be divided into two separate cases, after which either debtor may convert his or her individual case or move the court for separate dismissal.
- (c) **Matrix.** Prior to the entry of an order of joint administration or consolidation, movant shall request copies from the clerk ~~or through PACER~~ of the matrices for each of the cases affected by the order. Movant shall submit a supplemental certified matrix containing only those parties not already included on the matrix from the main case, without duplications or omissions. The matrix must be in compliance with the filing requirements as set forth in Local Bankruptcy Rule 1007-2 and shall be filed with a proposed order of ~~substantive consolidation or joint administration~~ no later than five days from the hearing date. This requirement shall not apply to the consolidation of a joint case under subsection (b) of this rule.
- (d) **Order.** An order of joint administration or consolidation shall identify the main case and ~~shall be submitted in sufficient number to permit an original order to will be filed in each of the affected cases.~~
- (e) **Caption, Docket Entries and Filing.** Prior to the entry of an order of ~~substantive~~ consolidation, all papers shall be captioned by their individual titles.
  - (1) **Consolidation.** Once separate cases have been ordered consolidated, they will be treated as one case for all purposes, with a single case number, caption, claims register and docket.
  - (2) **Joint Administration.** Subsequent to the entry of an order of joint administration, all papers shall be captioned in the case or cases to which they pertain and shall be entered and filed in the main case. When documents pertain to all of the jointly administered cases, there shall be no special designation on the docket or claims register. When documents pertain to one or more of the jointly administered cases but not all such cases, the docket or claims register will identify the specific case or cases to which the items relate. The clerk may rely upon the document's caption in determining the case or cases to which a particular document applies.
- (f) **Noncompliance.** Failure to comply with subsections ©) and (d) of this rule is cause for the court to vacate its oral order and deny the relief requested.

Comment

Consolidation includes substantive consolidation.

**RULE 1017-3: DISMISSED CASE - ~~REINSTATEMENT PRIOR TO~~  
~~CLOSING~~ MOTION TO VACATE ORDER OF DISMISSAL OR TO REINSTATE**

- (a) A motion to vacate or reconsider an order of dismissal shall be ~~for reinstatement of a dismissed case shall be~~ filed no later than ten days after the entry of the dismissal order and shall be served upon all creditors and parties in interest ~~unless pursuant to Federal Rule of~~

#### Bankruptcy Procedure 9024.

- (b) In addition to the requirements outlined in subsection (a), a motion ~~filed in a case dismissed for reinstatement of a dismissed case that was dismissed~~ for failure of the debtor to make payments shall state with particularity:
- (1) the circumstances which explain why the required payments were not made;
  - (2) the circumstances which have changed that would permit the debtor to make future payments;
  - (3) the date and manner of the proposed future payments by the debtor to the trustee; and
  - (4) any new debt incurred from the date of dismissal.
- ©) Any order ~~reinstating a dismissed case of reinstatement~~ shall be prepared by the debtor and served upon all creditors and parties in interest. The debtor shall also file a certificate of service of the order ~~of reinstatement~~ with the court.

#### Comment

This rule applies to ~~pending~~ dismissed cases ~~awaiting closing~~. If closing of the case has occurred, parties must proceed under 11 U.S.C. §350 and FRBP 5010 which necessitates the payment of a fee for reopening the case pursuant to 28 U.S.C. §1930(b). According to the Bankruptcy Court Fee Schedule promulgated by the Administrative Office of the U.S. Courts, the fee to be charged for reopening is the filing fee in effect for commencing a new case on the date of reopening. This rule applies to cases in which an order of dismissal has been entered on the docket but the case has not yet been closed in CM/ECF.

#### **RULE 1019-1: CONVERSION - PROCEDURE FOLLOWING**

- (a) **Filing of Additional Lists, Schedules, Statements.** In accord with FRBP 1019, the previously filed petition, lists, schedules, statements and claims actually filed shall be deemed filed in the converted case. Only the lists, schedules and any other statements necessary to complete the filing requirements in the newly converted case shall be submitted

for filing.

- (b) **Number of Lists, Schedules, Statements.** Unless otherwise ordered by the court, any lists, schedules or statements due upon entry of an order or notice of conversion, including the schedule of unpaid debts incurred after commencement of the superseded case, shall be filed ~~in the numbers required by Local Bankruptcy Rule 1007-1:~~ according to the requirements of Local Bankruptcy Rule 1007-1.
- ©) **Timeliness of Filing Schedule of Unpaid Debts.** When the schedule of unpaid debts is filed in a case converted to chapter 7 within the period prescribed by FRBP 1019(5), the clerk shall notice the creditors listed on the schedule regarding the filing of postpetition claims pursuant to FRBP 1019(6). When the schedule is untimely filed, the filer shall provide the foregoing notice, and promptly file proof of service thereof with the clerk.
- (d) **Supplemental Matrix.** Any lists, schedules or statements filed as a result of a conversion which include creditors not previously listed within the case matrix, shall be accompanied by a supplemental certified matrix prepared as directed by Local Bankruptcy Rule 1007-2, listing, without duplication, only those additional creditors.
- (e) **Small Business Election Upon Conversion to Chapter 11.** Immediately upon the conversion of a chapter 7, chapter 12 or chapter 13 case to chapter 11, the debtor must apprise the court in writing of its eligibility for treatment as a "Small Business," and whether it elects treatment as such. Failure of the debtor to supply this information shall result in the presumption that the debtor is not a Small Business.
- (f) **Debtor's Affidavit Upon Conversion to Chapter 11.** In addition to the contents specified in Local Bankruptcy Rule 2015-2, the debtor's affidavit shall set forth:
  - (1) if the case was originally commenced under chapter 7, 12 or 13, the name and address of any trustee appointed in such chapter 7, 12 or 13 case and the names and addresses of the members of any creditors' committee elected in the chapter 7 case; and
  - (2) the names and addresses of the members of any committee and any attorney for such committee, organized prior to the order for relief in a chapter 11 case, and a brief description of the circumstances surrounding the formation of any committee, including the date of formation.

#### **Comment**

As provided in FRBP 1007©), a previously filed petition, list, schedule and statement in a case is deemed filed in a superseding case. Conversely, FRBP 1019 addresses the effect of previously filed lists, schedules and statements in prior chapter 11, 12 and 13 cases when they are converted to chapter 7.

Subsection (a) of this rule mimics these provisions as to all other conversions. This rule makes clear that upon conversion, only the **additional** lists, schedules and statements required by the new chapter are to be filed.

This rule should be read in conjunction with Local Bankruptcy Rules 1007-1, 1007-2, **1007-3** and 2015-2.

**RULE 1073-1: ASSIGNMENT OF CASES AND ADVERSARY  
PROCEEDINGS /INTRA DISTRICT**

- (a) **Assignment of Cases and Proceedings to Albany.** All cases filed by residents of Albany, Clinton, Essex, Franklin, Fulton, Jefferson, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence, Warren and Washington counties will be assigned to the judge



sitting in Albany;

~~and~~, Cases filed by residents of Columbia, Greene and Ulster counties will be treated as Northern District cases and assigned to the judge sitting in Albany when filed in the Northern District of New York.

- (b) Assignment of Cases and Proceedings to Utica.** All cases filed by residents of Broome, Cayuga, Chenango, Cortland, Delaware, Hamilton, Herkimer, Lewis, Madison, Oneida, Onondaga, Oswego, Otsego, Tioga and Tompkins counties will be assigned to the judge sitting in Utica;
- ©) Assignment - General.** Except as otherwise provided in the Code and Federal Rules of Bankruptcy Procedure, the assignment of a case to a judge includes the assignment of all proceedings arising under Title 11 or arising in or related to a case under Title 11.
- (d) Intradistrict Transfer.** Irrespective of the case assignment, any judge may transfer to another judge within the district any case, contested matter or adversary proceeding. If a case is transferred from the judge sitting in Poughkeepsie to either Albany or Utica, these Local Bankruptcy Rules shall govern.
- (e) Objections to Assignment.** Objections to assignment of cases, adversary proceedings or contested matters shall be filed with the judge assigned to the case. However, objections based solely on an alleged incorrect assignment made by the clerk's office shall be filed with the chief judge of the court.

### Comment

Cases filed by residents of Columbia, Greene and Ulster counties are treated as Southern District cases when filed in the Southern District of New York. They are assigned to the judge sitting in Poughkeepsie and governed by the Local Bankruptcy Rules for the Southern District of New York, as provided by Local Bankruptcy Rule 1001-1(b).

Erroneous or misinterpreted information may result in the incorrect assignment of a case. The clerk may advise the court if it appears that the case has been improperly assigned. Appropriate adjustment can be made pursuant to subsection ~~(b)~~ (d) of this rule. The intentional furnishing of incorrect information may subject the person who provided such information to disciplinary rules or sanctions.

Reference is made to the attached appendix listing the counties comprising the Northern District of New York, which provides limited guidance with respect to where the court will hold hearings.

~~Interdistrict~~ transfer of cases ~~between districts~~ is governed by Local Bankruptcy Rule 1014-1.

**RULE 2002-1:        NOTICING TO CREDITORS & OTHER INTERESTED PARTIES**

- (a) Notice to All Creditors.** Unless the court otherwise provides, the court directs the proponent, excepting the office of the United States trustee, to give notice of:
- (1) a proposed use, sale or lease of property other than in the ordinary course of business;
  - (2) the hearing on approval of a compromise or settlement of a controversy;

- (3) in chapter 7, 11, and 12 cases, the hearing on the dismissal or conversion of the case to another chapter;
- (4) the time fixed to accept or reject a proposed modification of a plan;
- (5) except as limited by subsection (b), a hearing on all applications for compensation or reimbursement of expenses totaling in excess of ~~\$500~~ ~~1000~~ \$500.
- (6) the time fixed for filing objections and the hearing to consider approval of a disclosure statement;
- (7) the time fixed for filing objections and the hearing to consider confirmation of a plan;
- (8) the notice of entry of an order confirming a chapter 11 plan; and
- (9) in a chapter 7 case, the notice of the trustee's final report.

~~(b) — Limited Notice. Where an official Creditor Committee has been appointed and as permitted by FRBP 2002(i), required notices of hearings on approval of a compromise or settlement and on applications for compensation or reimbursement of expenses totaling less than \$25,000 may be mailed only to the committees or their authorized agents, to the United States trustee and to the creditors and equity security holders who file with the court a request that all notices be mailed to them.~~

**(b) Limited Notice.** Where an official Creditor Committee has been appointed and as permitted by FRBP 2002(I), required notices of hearing on the actions described below can be limited to committees or their authorized agents, the United States trustee and to the creditors and equity security holders who file with the court a request that all notices be mailed to them.

(1) Approval of a compromise or settlement;

(2) Application for compensation or reimbursement of expenses totaling less than \$25,000.

~~©) — Certificate of Service. Upon request, the clerk shall provide the noticing party with a copy of the updated matrix for the purpose of preparing address labels. A certificate reciting all parties upon whom service of any notice has been made shall be filed within five days of effecting service and no later than seven days prior to the return date of the hearing.~~

**©) Certificate of Service.** A certificate reciting all parties upon whom service of any notice has been made and stating the manner in which service was made shall be filed within five days of effecting service and no later than seven days prior to the return date of the hearing. For the purpose of preparing address labels, a copy of the updated matrix can be obtained from PACER or upon request from the clerk.

- (d) **Notices to Committees.** Except as the court may otherwise designate, pursuant to FRBP 9007, service of notice upon a committee may be made by serving the committee chairperson and the duly appointed attorney for the committee, if any, or other authorized agent. Upon application by a party in interest, the court may designate additional entities to whom notice shall be given.
- (e) **Return Address on Court Generated Notices.** The clerk shall place the name and address of the debtor's attorney of record, or that of the pro se debtor, as the case may be, as the return address on all notices sent out by the court to all creditors and other parties in interest.
- (f) **Duty to Renote on Returned Mail.** Should any such notices referred to in subsection (c) above be returned, debtor's counsel or the pro se debtor shall promptly send out the notice to any corrected address noted thereon for the given party in interest.
- (g) **Duty of Party in Interest to Notify Clerk of Change of Address.** Any change of address of an interested party should be filed with the clerk and such notice of the change must contain the debtor's name, case number, the party's name and original address given to the court, together with the party's complete new mailing address.

#### **Comment**

This rule is intended to facilitate the service of papers. Reference is made to Local Bankruptcy Rules 4002-2 and 9011-2 for requirements for designation of address and change of address for debtors and pro se parties, respectively.

The proponent of a notice under subsection (a)(1), (2), (3), (5) or (8) is referenced to LBR 9013-1~~(f)~~ (m) for form of the notice.

#### **RULE 2014-1: EMPLOYMENT OF PROFESSIONALS -**

- (a) **Requirements of the Application, Affidavit and Order.** Authority to employ a professional shall be sought by presentation of an application, affidavit and proposed order. The original application and original affidavit are to be submitted conventionally to the court, unless the application is filed electronically and pursuant to Local rule 9013-4, Default Motion Practice. The proposed order is also to be submitted conventionally.
  - (1) **Application.** An order approving the employment of a professional person pursuant to 11 U.S.C. §327 shall be made only on application by the trustee, debtor in possession or committee. The original application and affidavit of each, plus two

~~copies~~, shall be **submitted conventionally to with** the court. The application shall fully disclose:

- (a) the reason the professional should be hired;
- (b) the professional services to be rendered;
- (c) the proposed terms and conditions of employment including any arrangement for retainer;
- (d) the source of any retainer;
- (e) the hourly rates for professionals and paraprofessionals;
- (f) any contingent fee arrangement and;
- (g) all of the professional's connections with the debtor or any party in interest, including disclosure of the terms of any guaranty agreement with respect to payment of the professional's fee by a third party.

A copy of any written retainer agreement, and of any written guaranty agreement, shall be **filed submitted** with, and appended to, ~~each copy of~~ the application.

- (2) **Affidavit.** The application shall be accompanied by an **original** affidavit of the professional, setting forth any facts which might reasonably lead to the conclusion that the professional may not be disinterested or may hold an interest adverse to the debtor as defined in 11 U.S.C. §101(14).
- (3) **Order.** The order of appointment shall clearly state that no fees will be paid to the professional, including the use of any retainer received for postpetition services without prior approval of the court.
- (4) **Motions Pursuant to 11 U.S.C. 327(e) - Albany Only.** All motions pursuant to 11 U.S.C. 327(e) in Chapter 7 and Chapter 11 cases shall be noticed pursuant to Local Bankruptcy Rule 9013-4. In addition to service on the United States trustee, the Court requires service on the debtor and attorney for the debtor. Ex Parte applications and orders should not be submitted.

(b) **Auctioneers.** In addition to the requirements of subsection (a)(1) of this rule, an application seeking an order of appointment of an auctioneer shall:

- (1) set forth in the application that the auctioneer is duly licensed, the license number and the place of the auctioneer's business;
- (2) provide a copy of the surety bond referred to in Local Bankruptcy Rule 6005-1©) intended to cover the assets of the estate; and
- (3) where a blanket bond has been approved by the United States trustee and is on file with the court, shall disclose whether or not the applicant has been appointed as auctioneer in any other case, including case name(s) and case number(s) thereof, and

set forth whether or not the applicant has or will, within a reasonable period of time, come into possession of property of any other estate in which the applicant has been appointed auctioneer, together with a reasonable estimation of the value of all such property.

### **Comment**

This rule is intended to supplement FRBP 2014(a), and information required by this rule must be submitted contemporaneous with the information required therein. As required by Local Bankruptcy Rule 9034-1, the United States trustee must be served with a copy of the application and proposed order. FRBP 5002 sets forth certain restrictions applicable to professional appointments. Debtor's counsel must comply with the continuing disclosure requirements of FRBP 2016(b).

~~The amendment to subsection (a)(1) requiring filing with the court conforms the practice in the Albany and Utica divisions. The clerk will forward a copy of the application to the United States trustee.~~

Subsection (a)(3) requires that the proposed order approving the appointment make clear the necessity of obtaining court approval before any fees for postpetition services are paid. This includes the application of any prepetition retainer received to cover postpetition services.

When an application for employment is approved by the court, the appointment may be deemed effective as of the date of the initial receipt of the application by the court, or by office of the United States trustee, as provided by FRBP 5005(c).

## **RULE 2015-2: DEBTOR IN POSSESSION DUTIES**

- (a) **Monthly Statements of Operation Required in Chapter 7 (Operating) and Chapter 11 Cases.** The operating reports mandated by 11 U.S.C. §§704(8) and 1106 must be filed monthly, and, in addition to being filed directly with the court, the United States trustee and any governmental unit charged with responsibility for collection or determination of any tax arising out of the operations, shall be served upon any official committee or its attorney.
- (1) **Signature.** The operating reports filed in accordance with subsection (a)(1) of this rule must bear an original signature of the debtor or of the chapter 7 or chapter 11 trustee, verifying the accuracy of the information contained therein.

(2) **Failure to File Monthly Operating Reports.** Failure to file the required operating reports may be cause for the court to deny any affirmative relief sought by the debtor including, but not limited to, approval of a pending disclosure statement as provided by Local Bankruptcy Rule 3016-2 and confirmation of a plan.

(b) **Reporting Requirements for Chapter 12 and 13 Debtors Engaged in Business.** In the event the debtor engages in the operation of a business enterprise, including a family farm pursuant to 11 U.S.C. §1201, as a result of which the debtor is required to collect taxes or for which the debtor incurs tax liabilities in the ordinary course of the operation of the debtor's business, the debtor shall:

- (1) file with the trustee's office, a summary of business operations on such form as promulgated by the trustee or a copy of their most recent federal tax return when requested by the trustee and in such intervals as required by the trustee;
- (2) maintain a bank account which serves solely as a separate tax account (the Tax Account) for the deposit of all tax funds (including, but not limited to, funds held in trust for employee's withholding taxes, sales taxes and employer business taxes, with the exception of income taxes) which may be collected by the debtor and for which the debtor may become liable during the pendency of this case. Such tax funds are to be withdrawn from the Tax Account only for the remittance to the appropriate taxing authority or to a federal tax depository, and, the debtor shall provide proof of compliance to the trustee upon request;
- (3) within two business days from the date on which any salaries are paid to the debtor's employees, deposit that portion of such salaries as is required to be withheld for social security taxes and the employer's portion of social security taxes and disability and unemployment insurance taxes to the Tax Account, and, the debtor shall provide proof of compliance to the trustee upon request;
- (4) in those cases in which the debtor is required to collect sales taxes, deposit the sales taxes in the Tax Account not later than the Monday following each week for that week's sales tax liability, and, the debtor shall provide proof of compliance to the trustee upon request;
- (5) deposit any other taxes which the debtor is required to collect, or for which the debtor incurs liability in the ordinary course of the operation of the debtor's business (such as federal excise taxes) into the Tax Account no later than Wednesday of the week following the week in which such taxes were collected or in which the liability was incurred, and, the debtor shall provide proof of compliance to the trustee upon request;
- (6) during the pendency of the case, timely file all required federal and state tax returns;

~~and within three days of filing the return forward copies of such returns to the Internal Revenue Service and to the New York State Department of Taxation and Finance/Bankruptcy Section; and~~

- (7) during the pendency of the case, make required periodic deposits of federal and state taxes to a tax depository and provide the appropriate taxing authority with verification that such deposits were made within three days from the date of any such deposit.

### Comment

This rule addresses the requirement of filing monthly operating reports in chapter 7 cases when a business is authorized to be operated, in chapter 11 and 12 cases and in chapter 13 business cases.

~~Tax returns and tax payment shall be remitted to the Internal Revenue Service at Internal Revenue Service, Attn: Special Procedures Function, Leo O'Brien Federal Building, Clinton Avenue & North Pearl Street, Albany, New York 12207, (if the case is under the jurisdiction of the Buffalo Special Procedures, the address is Internal Revenue Service, Attn: Special Procedures Branch, P.O. Box 266, Niagara Square Station, Buffalo, New York 14201), and to the New York State Department of Tax and Finance/Bankruptcy Section-Special Procedures at Building 21, P.O. Box 5300, Albany, New York 12205-0300. These addresses are subject to change and should be verified prior to remittance.~~

Pursuant to FRBP 5003(e) the practitioners are referred to the Clerk's registry for the addresses for the filing of tax returns and remittance of payments.

## **RULE 2015-6: DEBTOR IN POSSESSION DUTIES - CHAPTER 11 AFFIDAVIT**

A debtor's affidavit shall be filed in each chapter 11 case and in any case converted to chapter 11 from chapter 7, 12 or 13.

- (a) **Contents of Affidavit.** A debtor in a chapter 11 case shall file ~~an original and one copy of~~ an **original** affidavit setting forth:
  - (1) the nature of the debtor's business and a concise statement of the circumstances leading to the debtor's filing under chapter 11;
  - (2) if the debtor failed to file its summary of schedules with the initial filing, a summary of the debtor's assets and liabilities;



- (3) a list of all property of the debtor in the possession or custody of any custodian, public officer, mortgagee, pledgee, assignee of rents or secured creditor or agent for any such person, giving the name, address and telephone number of such person and the court, if any, in which a proceeding relating thereto is pending;
  - (4) if the debtor failed to file its schedule A (real property) or schedule G (statement of executory contracts and unexpired leases) with the initial filing, a list of premises owned, under lease or held under other arrangement from which the debtor operates its business; and
  - (5) if the debtor failed to file its statement of financial affairs with the initial filing, the location of the debtor's substantial assets, the location of its books and records and the nature, location and value of assets, if any, held by the debtor outside the territorial limits of the United States.
- (b) **Additional Information Required if Business Continues.** If the debtor intends to continue the operation of its business, the affidavit shall so state and set forth:
- (1) the estimated amount of the weekly payroll payable to employees (exclusive of the officers, partners, stockholders and directors) for the 30 day period following the filing of the chapter 11 petition;
  - (2) the amount paid and proposed to be paid for services for the 30 day period following the filing of the chapter 11 petition:
    - (A) if a corporation, to officers, stockholders and directors;
    - (B) if an individual or a partnership, to the individual or the members of the partnership; and
    - (C) if a consultant has been retained, to such consultant.
  - (3) a schedule setting forth for the 30 days following the filing of the petition: estimated cash receipts and disbursements, net cash gain or loss, accrued but unpaid obligations, other than professional fees, and any other information relevant to an understanding of the foregoing.
- (c) **When to File.** In a voluntary chapter 11 case, the affidavit shall be filed within five days of the filing of the petition. In an involuntary chapter 11 case, the affidavit shall be filed within five days after entry of the order for relief or after the filing of a consent to the petition, whichever is earlier.
- (d) **Waiver of Requirements.** On application of the debtor and notice to the United States trustee showing that it is impracticable or impossible to furnish any of the foregoing

information, the court may dispense with any of the foregoing provisions, except that the affidavit shall contain the information required by paragraphs (1) and (2) of subsection (a) of this rule.

### **Comment**

This rule supplements FRBP 1007 and should be read in conjunction with Local Bankruptcy Rule 1019-1(f) when a case converts to chapter 11.

## **RULE 2016-1: COMPENSATION OF PROFESSIONALS**

- (a) ~~Final~~ Applications for Interim and Final Compensation.** Applications for compensation shall comply with all requirements, including those related to format, outlined in FRBP 2016(a) and the United States Trustee Fee Guidelines.
- (b) Filing and Paper Copy Requirements.** Applications for compensation are to be filed electronically. A paper copy marked *ECF Case-Chambers Copy* is to be provided to the Court. In addition, the U.S. Trustee is also to be provided with a paper copy of the application. The Chambers copy and the U.S. Trustee copy are to include all the items listed in subsections (b)(1) through (b)(9) of this local rule. Each application shall include:
  - (1) the date the applicant was appointed by the court and, if applicable, the method of compensation, the maximum compensation and any rate of compensation fixed in the order appointing applicant;

- (2) a statement as to whether all services for which compensation is requested were performed for, or on behalf of, the party retaining applicant or on behalf of any other person or paraprofessional;
- (3) a summary of the professional and paraprofessional services rendered including, in concise form:
  - (A) a factual explanation of the nature and extent of services performed, the results obtained, and the size of the estate; and
  - (B) in addition, if an interim fee request, an explanation of the status of the case, a projection as to the percentage of work which the current application covers in relation to the overall case and any other matters which will enable the court to determine the reasonable value of such services;
- (4) an exhibit consisting of contemporaneous daily time records for all professionals and paraprofessionals, arranged in a project billing format as suggested by the United States Trustee Fee Guidelines except that applications seeking compensation less than \$10,000 exclusive of expenses are exempt from the project billing requirement. Entries in the time records:
  - (A) must be legible and applicant shall define any codes, symbols, abbreviations or non-legal technical terms used in the time records; and
  - (B) must be sufficiently specific to permit the court to evaluate the reasonableness of the time allocated for the particular service. Failure to separately identify the time expended on each service with a single time entry may provide a basis for the court to deny compensation for that service;
- (5) a statement specifying the amounts, if any, within the total request that were previously received from any source, including guarantors, with or without court authorization;
- (6) a statement as to whether applicant has entered into any agreement to fix fees or to share compensation as prohibited by 18 U.S.C. §155 and 11 U.S.C. §504;
- (7) a statement describing the estate's ability to pay the fees requested and the status of fees owed to other administrative claimants of equal priority to the extent the professional is employed pursuant to 11 U.S.C. §§327 or 1103 and

compensation is sought from the estate and not a third party;

- (8) a specific description of the basis and justification for the request in terms related to the benefit of the services to the estate to the extent an enhancement of fees beyond those supported by the time records is sought; and
- (9) an itemization of expenses incurred, conforming with subsection ~~(b)~~ (c) of this rule.

©) **Reimbursement of Expenses.** All requests for reimbursement of expenses shall be separately supported in the application by a detailed, itemized listing. Each category of expenses shall be separately totaled. A summary of all expense categories shall be included, which total should equal the aggregate request.

- (1) The following expenses may be reimbursable if adequately supported in the application:
  - (A) duplication of documents at actual cost at a rate not to exceed 20 cents per page or, if the photocopies were made by an entity unrelated to the applicant, at the rate charged by the entity as supported by a photocopy of the invoice appended to the application;
  - (B) computer legal research at a rate not to exceed the cost of said service incurred by the applicant;
  - (C) long distance travel expenses, if adequately described, including the mode of transportation, the date, destination, and purpose of the trip, and, if by automobile, the number of miles traveled, the rate used, and substantiation of incidental expenses including lodging, tolls and parking; and
  - (D) facsimile transmission charges for outgoing transmissions to long distance numbers, reimbursable at either the actual toll charge or \$1.00 per page.
- (2) The applicant shall certify that all expenses for which reimbursement is sought were incurred on behalf of the client and no other person and that the reimbursement, if allowed in full, will not exceed the amount that applicant paid for the items.
- (3) The following expenses may be considered unreasonable unless separately justified through a detailed itemization and explanation by the applicant

including, but not limited to, why they were necessary and that the hourly rates charged by the professionals do not support said expenses as an overhead item within the applicant's office:

- (A) travel to and from the courthouse within a 25-mile radius;
  - (B) any charges for typing, word processing and clerical assistance;
  - (C) a travel mileage rate in excess of that which the Administrator of General Services has prescribed for official travel of employees of the Federal Government, as amended from time to time, and set forth in 41 C.F.R. Part 101-7 under authority of 5 U.S.C. §5704; and
  - (D) meal expenses incurred while on long-distance travel.
- (d) **Certification.** Each applicant shall certify that the person or entity on whose behalf the applicant is employed, including the debtor, the creditors' committee or the trustee, has been served with the application for compensation and reimbursement of expenses.
- (e) **Applications for Final Compensation in Chapter 11 Cases.** At the time of the hearing on the approval of the disclosure statement or at some later time, the court may fix the time by which all applications for final compensation must be filed. Absent such directive, all applications for allowance of fees and expenses must be filed prior to or with the report of substantial consummation.
- (1) **Estimate of Future Services.** An application for final compensation may include a reasonable estimate of the hours it is anticipated will be expended and the expenses incurred through the closing of the case. The estimate shall identify the specific tasks to be performed with an allocation of hours for each task.
- (2) **Supplementary Exhibit.** Any estimate of future services and expenses shall be subject to later substantiation in the form of a supplementary exhibit, to be filed both on the return date of the hearing on the application for final compensation and with the application for final decree. The exhibit shall be filed in conformity with subsection ~~(a)~~ (b)(4) governing professional compensation and FRBP 2016(a). The supplementary exhibit must account for the actual services, hours and expenses which were estimated in the previously submitted application.

### Comment

This rule provides a procedure for the court to fix final compensation of professionals in order to determine the total administrative expenses chargeable to the estate while at the same time compensating and monitoring services required after confirmation through the closing of the case. Subsection ~~(d)~~ (e) is intended to clarify that professionals who are required to be appointed by the court in order to be paid must receive court approval of fees and expenses for services rendered during the case, before the case is closed. Failure to file the supplementary exhibit required by subsection ~~(d)~~ (e)(2) in a timely manner may result in an order of the court directing a party to disgorge compensation allowed on the basis of previously submitted estimates.

Compensation of auctioneers is addressed by Local Bankruptcy Rule 6005-1.

The travel mileage rate changes referred to in subsection ~~(b)~~ (c)(3)©) of this rule shall be posted at the clerk's office filing counters. The expenses specifically addressed in this rule are not intended to be either an exclusive or exhaustive list of potentially reimbursable expenses.

United States Trustee Fee Guidelines are available on request through the office of the United States trustee in Albany or Utica, New York.

## **RULE 2016-2: CHAPTER 13 - COMPENSATION OF PROFESSIONALS**

- (a) **Applications for Compensation.** Unless otherwise determined by the court, if all or part of the compensation to the debtor's counsel as approved at the time of confirmation of a chapter 13 plan is to be paid through the chapter 13 trustee, and such compensation is not paid in full from a maximum of a sum equal to the aggregate of the first ten plan payments (net of trustee commissions) to be distributed by the trustee, then any remaining compensation will share **equally** thereafter with other creditors **or** at such percentage as may be fixed by the court.
- (b) **Notice to All Parties in Interest.** Notwithstanding any other provision of this rule, if the compensation for debtor's counsel is an amount greater than one-third of the amount to be funded through the chapter 13 plan, the compensation is subject to approval upon a hearing held on notice to all parties in interest as provided for under ~~FRPB FRBP~~ 2002(a)(~~7~~). (6).
- (c) **Ex Parte Application for Postconfirmation Fees.** An application that seeks allowance of fees and expenses totaling ~~\$500-1000~~ or less postconfirmation may be presented ex parte if it has the endorsed approval of the debtor and the chapter 13 trustee. If the application lacks the requisite approval, or if such postconfirmation fee will cause the total of compensation

to debtor's counsel to exceed the monetary limit of Local Bankruptcy Rule 2002-1(b), the fee must be approved after a hearing as provided in FRBP 2002(a)(7). (6). When additional compensation for postpetition services is approved by the court, said compensation shall be paid through the chapter 13 plan.

- (d) **Supplemental Application for Compensation.** The chapter 13 trustee may request, at any time, a supplemental statement pursuant to 11 U.S.C. §329(a) and FRBP 2016(a) to determine whether a hearing should be scheduled to consider whether payments to an attorney are excessive pursuant to FRBP 2017.

**RULE 2090-1: ATTORNEYS-ADMISSION TO PRACTICE /DESIGNATION FOR SERVICE AND ATTORNEY OF RECORD**

- (a) **Admission to District Court.** Any attorney who is admitted to practice before the district court of the Northern District of New York is also admitted to practice before this court.
- (1) **Pro Hac Vice.** A member in good standing of the bar of any state or of any United States district court not otherwise admitted to practice before the court, may be permitted to practice on motion in this court only for a limited purpose in a particular case, adversary proceeding, contested matter or action. An attorney seeking admission pro hac vice shall provide a certificate of good standing in support of counsel's motion for admission, as evidence of admission to the bar of the highest court of any state or of any United States district court, and shall pay to the district court Clerk the administrative fee required to practice ex parte or on motion.
- (b) **Designation for Service.** A judge may require an attorney who does not have an office in the Northern District of New York to designate a resident member of the bar of the Northern District of New York for service of process or papers.
- ~~©) **Designation of Attorney of Record.** For the purpose of the Clerk's noticing, if the attorney~~

~~who signs a petition is of counsel to a law firm, the firm will be listed as the “attorney of record” in the proceeding unless withdrawal or substitution of the attorney of record is accomplished as provided for under Bankruptcy Rules 2091-1 and 2092-1~~

**RULE 2091-1: ATTORNEYS - WITHDRAWALS - OTHER THAN BY SUBSTITUTION**

- (a) **Withdrawal Other Than by Substitution.** An attorney who has appeared as the attorney of record for a debtor may be relieved of representation only by order of the court after notice and a hearing. Withdrawal may be permitted upon submission of an affidavit stating satisfactory reasons for withdrawal and a statement of the status of the case. Notice of the requested withdrawal in every instance shall be given to the debtor, the United States trustee, the trustee, any §1104 trustee, any appointed committee and any party having filed a notice of appearance.
- (b) **Other Attorneys of Record.** Withdrawal of other attorneys of record may be accomplished by providing written notice to the court and to all creditors and interested parties. Withdrawing counsel shall furnish and file a certificate of service with the court in accordance with this rule.



**RULE 2092-1: ATTORNEYS - SUBSTITUTION**

- (a) Substitution.** A debtor's attorney may be substituted by order of the court after such notice and hearing as the court may direct. Substitution may be allowed upon submission of an affidavit stating satisfactory reasons for substitution and a statement of the status of the case, or, upon the submission of a stipulation signed by debtor(s), the attorney to be relieved and the substituted attorney.
- (b) Other Attorneys of Record.** Substitution of other attorneys of record may be accomplished by providing written notice to the court and to all creditors and interested parties. Substituted counsel shall furnish and file a certificate of service with the court in accordance with this rule.

**RULE 3001-1: CLAIMS AND EQUITY SECURITY INTERESTS - ~~GENERAL ASSET CASES~~**

~~(a) — Asset Cases.~~ In all chapter 11, 12 and 13 cases, and in a chapter 7 case noticed as an asset case, any entity filing a proof of claim shall properly identify the case to which such claim relates by stating the applicable case name and number assigned thereto. ~~Wage claims shall contain only the last four numbers of the claimant's social security number.~~

~~Amended or additional proofs of claims filed after the bar date shall be served upon the appointed Chapter 7, 12, or 13 Trustee and upon the debtor's attorney, as well as filed with the Clerk.~~

~~Proofs of claim, including any required documentation, should shall be filed in numbers as set forth in the notice fixing the deadline to file proofs of claim. If claimant desires a time-stamped copy, an additional proof of claim should shall be submitted along with a stamped, self-addressed envelope.~~

**Comment**

~~The filing of claim forms in duplicate facilitates the payment of dividends. The clerk retains the original proof of claim and the trustee, who oversees distribution, retains a copy.~~ Proper identification of the debtor estate by name and case number is essential for the clerk to properly process a claim being asserted.

#### RULE 3002-1: CLAIMS AND EQUITY SECURITY INTERESTS - NO ASSET CASES

~~(b) No Asset Cases. In a chapter 7 case noticed as a no asset case, no proof of claim shall be filed. Any proof of claim submitted in a chapter 7 case designated as a no asset case may be returned by the clerk without filing.~~

#### **Comment**

~~Proofs of claim in chapter 7 cases will only be accepted in a case noticed as an asset case. At the time of filing, if it appears that there are no assets from which a distribution can be paid to creditors, the case shall be designated as “no asset.” The notice to creditors will direct creditors not to file a proof of claim unless and until a subsequent notice is received. If it should later develop that the trustee uncovers assets from which a dividend might be paid, the designation of the case will be changed from no asset to an asset case. In that event, the clerk will notify all creditors of a deadline set for the filing of proofs of claim and creditors must then file claims on or before the deadline.~~



## **RULE 3002 - 2:        THIRD PARTY PROCESSING OF CLAIMS (CLAIMS AGENTS)**

- (a)     Request for Claims Agent.** In cases in which hundreds or thousands of creditors exist, the court may permit third parties to perform the docketing and processing of claims at the estate's expense. The request to employ third party claims processors is to be brought on by motion.
- (b)     Docketing of Claims in CM/ECF.** Claims agents receiving claims for docketing are required to stamp claims with the date received, scan the claims and docket them to the Court's CM/ECF system. Claims are to be docketed by the claims agent within 24 hours of receipt.
- (c)     Electronic Format of Claims Register.** Claims agents are required to keep claims registers in electronic format in the court's CM/ECF system.
- (d)     Transfer of Claims.** Claims agents are responsible for processing all transfer of claims forms and providing notice of the transfer as required by FRBP 3001. Claims agents are also required to give notice of the filing of a claim in the name of a creditor by a debtor or trustee as required by FRBP 3004.
- (e)     Retention of Original Claims and Transmission to the FRC.** The claims agent is to retain all original claims until the case is closed unless otherwise ordered by the court. Upon the closing of a case, the claims agent will be required to transmit claims registers and claims to the Federal Record Center.

## **RULE 3007-1: CLAIMS - OBJECTIONS**

- (a) **Claim Objections in Chapter 11 Cases.** Unless otherwise ordered by the court or provided by the plan, objections to claims in chapter 11 cases must be filed and served no later than ten days after the entry of an order of confirmation.
- (b) **Claim Objections in Chapter 12 and 13 Cases.** Absent a court order approving an extension of time, objections to claims in chapter 12 and 13 cases must be filed and served within 90 days of the trustee's service of the "Notice of Claims Filed" in the Albany court and within 90 days of the trustee's service of the "~~Motion Notice~~ to Allow Claims" in the Utica court. ~~The Notice of Claims served by the trustees in Albany shall be filed with the Clerk.~~
- (1) **Debtor's Objection to Additional or Amended Claim.** Unless the court orders otherwise, if an amended claim is filed or a claim is filed pursuant to Local Bankruptcy Rule 3001-1~~(e)~~, objections must be served within 90 days of the service of the Notice of Additional or Amended Claim by the trustee.
- (2) **Secured Claims.** An entity holding an allowed secured claim that obtains relief from stay shall not continue to receive the payments provided for in the confirmed plan once the trustee receives the order granting the relief. Funds to be disbursed by the trustee on the allowed secured claim shall be held in reserve and paid to the secured creditor only upon consent of the parties or upon application and order of the court.
- (3) **Amended Secured Claims.** The affected creditor referred to in subsection (b)(2) shall retain the right to file an amended claim. The amended claim shall state:
- (A) the date and terms of the disposal of the secured property;
  - (B) the name of the entity to whom the secured property was transferred;
  - ©) the consideration received therefor; and
  - (D) a detail of all charges claimed in retaking, holding and disposing of the property.

### Comment

Subsection (a) of this rule sets a date by which objections to claims must be filed in chapter 11 cases in order to expedite the resolution of administrative matters remaining after confirmation. In many chapter 11 cases, a plan proponent should and will file objections to claims earlier and well in advance of confirmation in order to have objections resolved prior to confirmation.

Subsection (b) of this rule presumes that a creditor who has obtained relief from the stay will proceed to recover the collateral securing its loan thereby obviating the necessity of continued

payments on the secured portion of the claim. Despite stay relief, however, the rule encourages the parties to resolve outstanding issues to allow continued payment on the secured claim under the terms of the confirmed plan.

**RULE 3012-1: VALUATION OF COLLATERAL**

The following rules shall apply with respect to the valuation of collateral in chapter 13 cases.

**(a) Debtor's Duty to Make Property Available for Appraisal.**

Unless otherwise ordered by the court, within ten days of a written request by a party in interest, the debtor must make available any item of personalty for appraisal. The appraisal shall be conducted at the debtor's residence absent specific contrary agreement of the parties. It shall be the affirmative duty of the debtor to contact the party in interest requesting the appraisal to arrange for the appraisal or to seek a protective order.

**(b) Failure to Appear at Valuation Hearing.**

Unless otherwise determined by the court, if the debtor appears but the creditor fails to appear at any valuation hearing, the court may find that the value of the collateral is as set forth in the debtor's schedules. If an objecting creditor appears at a valuation hearing and the debtor fails to appear, the court may find the value of the collateral is the value as appraised by the creditor.

~~©) Treatment of Certain Undersecured Claims. In the absence of a court order, a secured claim involving personalty that is undersecured by more than \$2,000 shall be paid the value of the collateral through the plan by the chapter 13 trustee, with the remaining balance to be paid through the plan as a general unsecured debt. Nothing in this subsection shall be construed as preventing a debtor from proposing a plan to pay any secured claim through the plan whether oversecured or undersecured.~~

**RULE 3015-1: CHAPTER S 12 & 13 - PLAN**

**(a) Disclosure of Minimum Percentage Payment to Unsecured Creditors.**

The debtor's plan shall state the specific minimum percentage to be paid to unsecured



creditors.

**(b) Payment of Real Property Taxes Through the Plan.**

If the debtor proposes to pay delinquent real property taxes through the plan, then, for each parcel affected, debtor's counsel shall supply to the chapter 12 or 13 trustee not later than the date scheduled for the §341 meeting of creditors, the following:

- (1) tax map section, block and lot numbers or other identifying numbers of the real property at issue, the name(s) in whom the parcel is assessed and a copy of the tax map; and
- (2) name, title and address of each real estate tax collector to whom the trustee is to pay taxes, together with the taxing entity of each (e.g., county name, school district name, city or village).

**©) Service of ~~Chapter 13~~ Plan Filed After Petition.**

If a debtor elects to file a plan after the filing of the petition pursuant to FRBP 3015, the debtor's attorney, or, if pro se, the debtor, must serve the plan or a complete summary of the proposed plan, together with a notice of the hearing on confirmation, on each creditor, the trustee and the United States trustee. The debtor's attorney or the pro se debtor must also file an appropriate certificate of service with the court and provide a copy to the trustee. The certificate of service shall be filed within five days of effecting service and no later than seven days prior to the return date of the confirmation hearing.

**RULE 3015-2: CHAPTERS 12 AND 13 - AMENDMENTS ~~OR MODIFICATIONS~~ TO PLANS**

- (a) If a debtor ~~or other proponent~~ in a chapter 12 or chapter 13 case wishes to amend a proposed

plan or modify a confirmed plan, the debtor ~~or other proponent~~ shall:

- (1) serve a copy of the notice of the amendment or modification on the trustee, the United States trustee and all ~~detrimentally affected~~ creditors;
- (2) ~~and shall~~ file the original notice with the clerk within ten days after service;
- (3) ~~The debtor or other proponent shall also~~ file a certificate of service with the clerk and provide a copy to the trustee within ten days after service; and
- (4) file an original amended or modified plan with the clerk and serve a copy on the trustee and United States trustee

(b) A notice of plan amendment or modification shall include, but is not limited to, the following disclosures:

- (1) a clear statement of the amendment or modification, with specific reference to the provisions of the previously filed plan that are being amended or modified;
- (2) any change in the dividend to be paid to unsecured creditors, indicating the specific numerical change in the dividend;
- (3) any change in the time for final payment under the plan;
- (4) any change in the plan payment;
- (5) any effect on the specific treatment of secured creditors under the plan; and
- (6) the exact reasons for the amendment or modification, including specific and detailed changes in the budget of the debtor, or other circumstances of the debtor that would justify the amendment or modification.

©) For a preconfirmation amended plan, notice of the amended plan shall not be later than 20 days prior to the date fixed for the hearing on confirmation of the plan, or any adjournment thereof. The notice shall advise detrimentally affected parties of any adjourned confirmation hearing date and time.

~~(d) In addition to the requirement of subsection (a), an original amended or modified plan shall be filed with the clerk. A copy shall be served on the trustee and United States trustee.~~

### Comment

This rule is intended to supplement 11 U.S.C. §§1223, 1323, 1229 and 1329 and FRBP 2002(a)(5) and 3015. The procedure for postconfirmation modifications can be found in Local Bankruptcy Rule 9013-4(b)(21).

**RULE 3015-3:            CHAPTER S 12 AND 13 - CONFIRMATION**

The confirmation order shall be prepared and submitted by the trustee. Upon written request, the trustee shall serve a copy of the proposed confirmation order upon any requesting party prior to or at the time of its submission to the court. Within ten days of the service of the order, debtor's

counsel or any other entity served with the order, shall notify the trustee of any objections to the terms of the order.

#### **RULE 3015-4: CHAPTERS 12 AND 13 - OBJECTIONS TO CONFIRMATION**

**(a) Service of Objection.**

Any objection to confirmation must be in writing, filed with the clerk and served on the debtor, debtor's attorney and the trustee no later than five business days before the scheduled hearing on confirmation.

**(b) Appearance Required Upon Written Objection.**

If a written objection is served, all parties shall be present at the confirmation hearing. If the objecting creditor or creditor's counsel fails to appear at the confirmation hearing, the court may treat the objecting party's absence as a waiver of the objection. If debtor's counsel is absent, the court may deny confirmation.

**©) Objections to confirmation shall:**

- (1) specify the number and letter section(s) of Title 11 of the United States Code upon which the objection is grounded;
- (2) allege the specific facts which support the objections to confirmation; and
- (3) summarize the creditor's claims against the debtor including the alleged classification (secured, unsecured, priority or administrative) and the amount of the claim(s).

**(d) Separate Pleading Required.**

Objection(s) to confirmation shall be treated as responsive pleadings only and may not be combined with any motion seeking any affirmative relief other than denial of confirmation.

#### **Comment**

This rule is intended to address the procedure by which objections to confirmation in chapter 12 and 13 cases are framed for consideration by the court. Since objections to confirmation are frequently resolved by the insertion of special provisions in the order of confirmation, subsection ©) of this rule facilitates the process of "settling" the terms of the confirmation order prior to its entry by the court.

#### **RULE 3015-5: CHAPTER 13 - ADMINISTRATION OF PAYROLL DEDUCTION ORDERS**

**(a) Implementation of Payroll Deduction Order.**

Proposed Payroll Deduction Orders in pending Chapter 13 cases shall be prepared and submitted by the debtor's attorney or the Chapter 13 Trustee. Payroll Deduction Orders shall be produced with word processing software ~~typewritten, two-hole punched~~ and contain the debtor's name, case number, redacted social security number (last four digits), employer's name, employer's address, the amount of the deduction, and the address where Chapter 13 plan payments should be sent. ~~Payroll Deduction Orders should be submitted in duplicate with a stamped self-addressed envelope so that the signed Payroll Deduction Order may be returned to the sender for administration.~~

**(b) Termination of Payroll Deduction Order.**

Upon completion of a Chapter 13 plan, an Order Ceasing Payroll Deduction shall be prepared and submitted by the debtor's attorney or the Trustee.

**(c) Amended Payroll Deduction Orders.**

In the event the debtor changes employment during the course of the Chapter 13 case, and a new Payroll Deduction Order is desired, the debtor's attorney or the Trustee must prepare and submit a new Payroll Deduction Order, which must be clearly marked "Amended".

The jurisdictional statement in the chapter 11 plan shall reflect the fact that the court will retain jurisdiction until there is substantial consummation of the plan. The court may find a plan to be substantially consummated at the time the first payment is made pursuant to the plan if the other conditions of 11 U.S.C. §1101(2) are satisfied.

**RULE 3016-2:****DISCLOSURE STATEMENT - GENERAL**

A proposed disclosure statement submitted for court approval shall contain on its face the following language, or words of similar import, in boldface type:

**THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCE OR REJECTION MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE COURT.**



**RULE 3017-1:**

**DISCLOSURE STATEMENT - APPROVAL**

**(a) Amended Disclosure Statement.**

Any amended disclosure statement shall be prepared with any additions bolded and deletions crossed out. The amended disclosure statement shall be filed with the clerk, with a copy to chambers, and served on the United States trustee and other parties in interest.

**(b) Condition of Approval.**

Except for good cause shown, no order shall be entered approving the disclosure statement unless all operating statements have been filed and served pursuant to FRBP 2015(a)(3) and Local Bankruptcy Rule 2015-2.

**RULE 3018-1:           BALLOTS - VOTING ON PLANS**

**(a)     Filing and Review.**

All chapter 11 ballots transmitted to creditors for the purpose of voting to accept or reject the proposed plan of reorganization shall be filed with the proponent of the plan. Ballots received shall be made available for review, upon request, by any party in interest.

**(b)     Certification.**

At least three business days prior to the hearing on confirmation, the proponent of a plan shall certify to the court the amount and number of allowed claims or interests of each class accepting or rejecting the plan in accordance with 11 U.S.C. §1126. The ballots received by the proponent of the plan must be submitted to the court as an exhibit to the certification. A copy of the certification shall be served by the proponent on the debtor, trustee, if any, United States trustee and any court approved committee. On the basis of the certification, the court may find that the plan is subject to confirmation. If an issue is raised as to the proponent's compliance with 11 U.S.C. §1126, the court may hold an evidentiary hearing prior to any confirmation hearing.

Failure to timely file the required certification and ballots is cause for the court to postpone the hearing on confirmation.

**Comment**

Subsection (b) of this rule imposes a certification requirement that permits the court to rely on such certification in determining whether a plan has been accepted or rejected pursuant to 11 U.S.C. §1126.

## **RULE 3019-1: CHAPTER 11 - AMENDMENTS TO PLANS**

In the event that the proponent of a chapter 11 plan files a modification of the plan after transmittal of the approved disclosure statement and before acceptance of the plan, the proponent shall **file and** serve a copy of the plan, as modified, on the debtor, trustee, if any, the United States trustee and any creditors' or equity security holders' committee appointed pursuant to Title 11 of the United States Code ~~no later than 11 days prior to the date fixed for the hearing on confirmation.~~ On notice to such entities, the court shall determine whether the modification adversely affects the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted the modification in writing. If the modification is not adverse, the plan, as modified, shall be deemed accepted by all creditors and equity security holders who accept the plan. If the modification is adverse, the requirements of FRBP 3017 shall apply to the modified plan and any amendment of the disclosure statement made necessary by the modification. **The proponent of the modified plan shall file a certificate of service with the clerk after service of the notice of the hearing on the modified plan upon affected entities.**

### **Comment**

Pursuant to 11 U.S.C. §1127(a), the proponent of a chapter 11 plan may modify such plan at any time before confirmation. While FRBP 3019 governs modification of a plan after acceptance and before confirmation, this rule governs modification subsequent to the transmission of an approved disclosure statement and before acceptance.

**RULE 3020-1:****CHAPTER 11 - CONFIRMATION****(a) Objection to Confirmation.**

An objection to the confirmation of a chapter 11 plan shall be served and filed not later than five business days prior to the first date set for the hearing to consider confirmation of a plan, or by such other date as the court may fix.

**(b) Withdrawal of Objection.**

In the event an objection to confirmation of a plan is withdrawn or abandoned, the plan shall not be confirmed unless the plan's proponent, together with counsel, state on the record or by affidavit the consideration promised or given, directly or indirectly, for the withdrawal or failure to prosecute the objection.

**(c) Motions to Confirm by "Cram-Down."**

If the proponent of the plan intends to seek confirmation of the plan as to one or more classes pursuant to 11 U.S.C. §1129(b), the proponent shall file and serve upon the member or members of such class or classes, not less than seven business days prior to the hearing to consider confirmation, notice of its intent to seek confirmation of the plan as to such class or classes pursuant to 11 U.S.C. §1129(b). Such notice shall be accompanied by an affidavit setting forth the facts and circumstances necessary to establish that the plan's treatment of such class or classes complies with the applicable provisions of 11 U.S.C. §1129(b).

**Comment**

Subsection (a) of this rule designates a fixed time for filing and service of an objection to confirmation as permitted by FRBP 3020 (b)(1). Subsection (c) sets forth the required procedure for requesting the court to "cram-down" a given class which has not accepted the plan.

**RULE 3021-1: CHAPTER 11 - AFFIDAVIT REPORTING POST CONFIRMATION**

## **DISBURSEMENTS**

**(a) Requirement.**

The proponent of the plan or the disbursing agent defined by the plan or designated by the court shall file with the court and serve upon the United States Trustee an affidavit reporting all cash disbursements for each month after confirmation of the plan.

**(b) Time for filing.**

The affidavit shall be due on the 15<sup>th</sup> day of the month following the reported month. The duty to file the monthly affidavit shall cease upon entry of the final decree pursuant to FRBP 3022, the conversion of the case to another chapter, or the dismissal of the case, unless otherwise ordered by the court.

**(c) Contents.**

The monthly affidavit shall disclose all disbursements, including but not limited to:

- (1) the total amount of payments made for the reported month pursuant to the plan, with a subtotal of payments for each class defined in the plan, and a statement explaining whether the total amount paid to the class complies with the terms of the plan, is in a lesser amount or whether there is good faith dispute about the amount owed;
- (2) the administrative expenses paid; and
- (3) the total of cash disbursements made in the ongoing operation of the debtor's business, if any.

**(a) Disbursing Agent.**

At the time of confirmation of the chapter 11 plan, the court may designate an individual to serve as disbursing agent for the purpose of making the first payment pursuant to the plan. Any designated disbursing agent shall be named in the order of confirmation.

**(b) Report of Substantial Consummation.**

The proponent of the plan shall file a report of substantial consummation which provides a basis for the court to find that the proponent of the plan has satisfied the criteria of 11 U.S.C. §1101(2).

The report of substantial consummation shall be accompanied by a motion for final decree on notice to all creditors and parties in interest. Unless otherwise ordered by the court, the final report form, a proposed final decree, the cancelled checks representing the distributions made pursuant to the confirmed plan and the supplementary exhibit to the application for final compensation required by Local Bankruptcy Rule 2016-1 are not required to be served with the motion but must be filed with the court.

Based on the information received, the court shall ascertain whether the case has been fully administered and entertain the entry of the proposed final decree closing the case. Pursuant to FRBP 3022, factors the court may consider in determining whether the estate has been fully administered include:

- (1) whether the order confirming the plan has become final;
- (2) whether deposits required by the plan have been distributed;
- (3) whether the property proposed by the plan to be transferred has been transferred;
- (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan;
- (5) whether payments under the plan have commenced; and
- (6) whether all motions, contested matters and adversary proceedings have been finally resolved.

**©) Time for Filing.**

The court may require the report of substantial consummation to be filed as early as the time that all checks have cleared as to the first payment made under the plan. In no event shall the report be filed later than 180 days after entry of a final order confirming a plan unless the court, for cause shown, extends the time upon motion filed and served within the original 180 day period.

**Comment**

The court may name the debtor, debtor's attorney or some other individual to serve as disbursing agent with respect to making the first payment under the plan. Any compensation to a disbursing agent must be preapproved by the court.

Section 350(a) of the Code and FRBP 3022 provide that the court shall enter a final decree closing a case when it is fully administered, on the court's own motion or on motion of a party in interest. Those authorities, however, provide no deadline for such motions. It has been the experience of the court that there has often been an inordinate and unnecessary delay in filing such

motions. This rule is intended to remedy that problem.

The court may administratively close the case after the first payment is made under the plan and the required report and accompanying documents are filed by the plan proponent. Under this rule, the plan proponent must file the report not later than 180 days after confirmation or as otherwise directed by the court.

The final report shall be signed and sworn to or affirmed and shall include the proper caption, but is not limited to, the following information:

1. Administrative expenses:

Trustee compensation (if applicable)	\$ _____	
Attorney for trustee compensation		
(if applicable)	\$ _____	
Attorney for debtor compensation	\$ _____	
Other professionals compensation	\$ _____	
All expenses	\$ _____	
Total administrative expenses		\$ _____
2. Percentage of claims paid:

Percentage of claims paid to general		
unsecured creditors		_____ %

I hereby certify under penalty of perjury as provided by 28 U.S.C. § 1746 that the foregoing statements contained herein are true and correct.

Once jurisdiction has been divested by the bankruptcy court, in the event of a subsequent default by the debtor under the terms of its confirmed plan, aggrieved creditors have the remedy of suit on the plan and order of confirmation. The debtor's confirmed plan creates obligations of the debtor to creditors which have been substituted for the debtor's pre-petition obligations. These obligations are valid and enforceable in state and federal courts which otherwise have jurisdiction over the parties and their claims.

**RULE 4001-1:           AUTOMATIC STAY - RELIEF FROM**

See Local Bankruptcy Rule 9013-4 (Default Motion Practice).

**RULE 4001-3:**

**OBTAINING CREDIT**



If authority for obtaining credit or incurring debt is sought pursuant to 11 U.S.C. §364(c) or (d), the notice of motion shall expressly state whether priority over any or all administrative expenses specified in 11 U.S.C. §§503(b)(2) or 507(b) is sought, and the names of those creditors specifically affected thereby.

- (a) The debtor shall make written application to the trustee for approval to incur any non-emergency consumer debt that does not involve a material modification of the debtor's budget. The debtor shall not file the application with the clerk. If approved by the trustee, the trustee shall file the approval and the application with the clerk. If not approved by the trustee, the debtor may then file a motion to incur nonemergency consumer debt and the motion shall contain as an attachment the trustee's denial.
- (b) If a motion is required, the motion shall be on notice to the trustee, the United States trustee and all creditors.

### **Comment**

This rule facilitates the process whereby a chapter 12 or 13 debtor may incur ordinary credit of a nonemergency nature which does not materially affect the debtor's budget. This could involve, for example, a debtor incurring credit to finance an automobile during the life of a plan.

### **RULE 4002-2: ADDRESS OF DEBTOR**

If the address of the debtor or the debtor's attorney is changed at any time during the

administration of the case, the debtor shall immediately provide written notice of such change to the clerk, the United States trustee, any trustee or committee and any other parties affected thereby.

**Comment**

See also Local Bankruptcy Rules 9011-1 and 9011-2.

**RULE 4080-1:**

**CHAPTERS 12 AND 13 - EMERGENCY REFUND OR  
CREDIT**

**(a) Written Request to Trustee.**

The trustee is authorized to issue an emergency refund or allow an emergency credit in chapter 12 or 13 cases from property of the estate in an amount not to exceed one monthly payment or credit per case, per year, provided:

- (1) that the request for such refund or credit is in writing;
- (2) that the request is signed by the debtor (both debtors in a joint case) or by the debtor's counsel;
- (3) that exigent circumstances support such emergency refund or credit; and
- (4) that the issuance of the refund or allowance of the credit will not substantially affect distributions to creditors.

**(b) Form of Emergency Refund or Credit.**

In the trustee's discretion, the trustee may issue an emergency refund check or allow the debtor to forego the next monthly payment.

**RULE 5005-1: ~~FILING OF PAPERS AND FORM - REQUIREMENTS~~  
~~PLACE OF FILING~~**

~~(a) **Filing.** All papers in a pending case shall be filed in the office of the clerk where the~~

~~assigned judge sits. After regular business hours on weekdays, on Saturdays, Sundays and legal holidays, the clerk or court, when good cause is shown, may make arrangements to permit the filing of pleadings or other papers at locations other than the official courthouses within the district.~~

~~(b) Form. See District Court Local Rules 10-1(a) and (b).~~

All petitions, motions, pleadings, memoranda of law, or other documents required to be in writing must be filed electronically or in the office of the clerk where the assigned judge sits. After regular business hours on weekdays, on Saturdays, Sundays and legal holidays, the clerk or court, when good cause is shown, may make arrangements to permit the filing of pleadings or other papers at locations other than the official courthouses within the district.

#### ~~**RULE 5005-2. FILING PAPERS - NUMBER OF COPIES**~~

~~(a) Conformed Copies. All proposed orders or judgments for entry shall be filed in duplicate except when such additional copies are required by Local Bankruptcy Rule 9022-1(a). If~~

~~the filing party desires a conformed copy, the papers should be accompanied by a postage paid self-addressed envelope.~~

~~(b) Noncompliance. Failure to comply with subsection (a) of this rule is cause for the court to vacate its oral order and deny the relief requested.~~

### **Comment**

~~Refer to the following Local Bankruptcy Rules for the required number of copies to be filed with the original papers:~~

~~Rule 1002-1 (Petition - General);~~

~~Rule 1003-1 (Involuntary Petitions [Filing Requirements]);~~

~~Rule 1007-1 (Lists, Schedules & Statements);~~

~~Rule 1009-1 (Amendments to Lists, Schedules & Statements);~~

~~Rule 1019-1 (Conversions);~~

~~Rule 2014-1 (Employment of Professionals); and~~

~~Rule 2015-2 (Debtor In Possession Duties - Chapter 11 Affidavit).~~

~~Whenever a filing party desires the return of a conformed or time-stamped copy of a document, an additional copy of such document together with a postage paid self-addressed envelope must be provided.~~

#### **~~RULE 5005-4:~~ 5005 - 4 ELECTRONIC FILING**

~~(a) — No papers shall be filed by electronic means. In the event a party deems it necessary to submit any document to the court by electronic means, permission must first be obtained from the court. Any document submitted to the court by electronic means will not, however, be deemed filed. In all cases where documents required to be filed with the court are submitted to the court by electronic means, the original must be delivered to the court within 24 hours and it is the original that will be filed and docketed on the date it is received in the clerk's office.~~

All papers, with the exception of those listed in the Administrative Procedure, shall be filed electronically using the Electronic Case Filing System. Documents may not be filed ~~submitted by~~ facsimile transmission, electronic mail transmission or on disk.

~~— (b) — Transmission by “electronic means” is defined as the transmission of information telephonically or through the use of compatible computer communication programs and includes, but is not limited to, facsimile transmission, electronic mail transmission and portable disk.~~

#### **RULE 5005 - 5: ELECTRONIC CASE FILING (ECF) PASSWORDS**

- (a) **Requirement to Have Password for Electronic Filing.** An ECF password is required to file any document electronically. Attorneys, creditors and claims agents may receive ECF passwords to file papers electronically.
- (b) **Attorney Password - Within District.** An attorney password allows an attorney to electronically file all types of documents. Each attorney admitted to practice in this court must submit to the Bankruptcy Court a completed Attorney/Participant Registration Form (Form A), a Credit Card Blanket Authorization Form (Form C) and be trained on the ECF system before the attorney will be allowed to have a password. Training is available from either the Bankruptcy Court for the Northern District of New York or the District Court for the Northern District of New York.
- (c) **Attorney Password - Out of District.** Out of district attorneys authorized to file electronically in another court will be provided with a password to the ECF system upon submission to the Bankruptcy Court of the Out of District Attorney Registration Form (Form B), a Credit Card Blanket Authorization Form (Form C) and the successful completion of the court's on-line ECF test. The test cover aspects of the local rules and the Administrative Procedure.
- (d) **Creditor/Limited Use Password.** Creditors who are not represented by an attorney and claims agents may obtain a creditor/limited use password. The limited use password will allow the filing of proofs of claim, objections to claim, transfers of claim, objections to transfer of claim, requests to reclassify claims, withdrawals of claim, notices of appearance, creditors request for notice, reaffirmation agreements and certificates of service.
- (e) **Registration Forms for Obtaining Passwords.** Registration forms are contained in the Administrative Procedure and are available at the court's website: [www.nynb.uscourts.gov](http://www.nynb.uscourts.gov). Forms received by e-mail or fax will not be processed. All signed original Attorney Participant or Out of District Attorney Registration Forms shall be mailed or delivered to:  
**IT Manager**  
**United States Bankruptcy Court**  
**James T. Foley U.S. Court House**  
**445 Broadway**  
**Suite 330**  
**Albany, NY 12207**
- (f) **Credit Card Blanket Authorization Forms.** All signed original Credit Card Blanket Authorization Forms shall be mailed or delivered in an envelope marked "CONFIDENTIAL" and addressed as follows:



**Intake Supervisor  
United States Bankruptcy Court  
James T. Foley U.S. Court House  
445 Broadway  
Suite 330  
Albany, NY 12207**

- (g) Scheduling of Training.** Training on ECF will be scheduled according to the order in which the completed Registration Form and Credit Card Blanket Authorization Form are received by the court.
- (h) Login and Password Serves as Signature.** The filing of a document in the CM/ECF system by an attorney or creditor who uses the assigned login and password constitutes a signature for purposes of Bankruptcy Rule 9011.

## **RULE 5005-6            PRIVACY**

- (a) Personal Identifiers.** Except as required by Bankruptcy Rules 1005, 1007(f) and 2002(a)(1) (effective 12/1/2003) and unless ordered by the court, parties are to refrain from including,

or are to partially redact when inclusion is necessary, the following personal data identifiers from papers filed with the court, including any exhibits thereto:

- (1) **Social Security Numbers.** If an individual's social security number must be included in a pleading, only the last four digits of the number should be used. This instruction does not apply Tax ID numbers.
  - (2) **Names of minor children.** If the involvement of a minor child must be mentioned, only the initials of the child should be used.
  - (3) **Dates of birth.** If an individual's date of birth must be included in a pleading, only the year should be used.
  - (4) **Financial Account Numbers.** If the financial account numbers are relevant, only the last four digits of these numbers should be used.
- (b) **Responsibility.** The responsibility for redacting personal identifiers rests solely with the counsel and the parties. The clerk will not review each pleading or other paper for compliance with this rule and will not redact personal identifiers.

#### **RULE 5010-1: REOPENING CASES**

A motion to reopen a case pursuant to FRBP 5010 shall be in writing and shall be accompanied by the appropriate filing fee. Unless otherwise ordered by the court, the motion shall be brought on notice to the former trustee, the United States trustee and, when the moving party is

not the debtor, to the debtor.

If the case has been transmitted to the Federal Records Center for storage, a separate retrieval fee must accompany the motion. The filing fee but not a retrieval fee may be waived by the court if a case is reopened to correct an administrative error or on account of actions relating to discharge.

#### Comment

The requirement to reopen a closed case by motion and payment of the appropriate filing fee applies to both conventionally filed cases and electronically filed cases.

## **Rule 5011-1. Withdrawal of Reference**

- (a) **Form of Request and Place for Filing.** A request for withdrawal in whole or in part of the reference of a case or proceeding, other than a sua sponte request by the Bankruptcy Judge, shall be by timely motion of a party and in accordance with Local Rule 9013-1. The Bankruptcy Judge may not conduct hearings on a withdrawal motion, but the motion should be filed with the bankruptcy clerk and a fee should be collected. The fee is equal to the civil action filing fee under 28 U.S.C. Sec. 1914(a). All such motions shall clearly and conspicuously state that: RELIEF IS SOUGHT FROM A UNITED STATES DISTRICT JUDGE as per Fed. R. Bankr. P. 5011(a).
- (b) **Stay.** The filing of a motion to withdraw the reference does not stay proceedings in the bankruptcy court. The procedures relating to stay shall be the same as set forth in Fed. R. Bankr. P. 8005.
- (c) **Responses to Motions to Withdraw the Reference;** Opposing parties shall file with the bankruptcy clerk and serve on all parties to the matter to which withdrawal of the reference has been requested, their written responses to the motion to withdraw the reference, within 11 days of service of a copy of the motion.
- (d) **Designation of Record.** Upon the entry by the bankruptcy clerk of an order by a United States District Judge granting the motion and where the order is to the bankruptcy case, the moving party shall file a list designating those portions of the record of the proceedings in the bankruptcy court that the moving party believes will be reasonably necessary or pertinent. If the record designated by any party includes a transcript of any proceeding or a part thereof, that party shall immediately after filing the designation deliver to the reporter and file with the bankruptcy clerk a written request for the transcript and make satisfactory arrangements for payment of its cost. Where the order is to an adversary proceeding, the Court shall designate the entire record of the adversary proceeding.
- (e) **Transmittal to and Proceedings in District Court.** When the record is complete for purposes of transmittal, the bankruptcy clerk shall promptly transmit to the district clerk any remaining portions of the record designated. Upon transmittal of the record, documents pertaining to the matter under review by the district court shall be filed with the Clerk of the district court, but all documents relating to other matters in the bankruptcy case or adversary proceeding shall continue to be filed with the bankruptcy clerk. The district court may, at its discretion, retain the entire matter withdrawn or may refer part or all of it back to the Bankruptcy Judge with or without instructions for further proceedings.

**RULE 5073-1: PHOTOGRAPHY, RECORDING DEVICES & BROADCASTING**

- (a) **Prohibition.** All photographing, oral or video tape recording, and radio or television broadcasting is prohibited in the courtroom during the progress of or in connection with judicial proceedings, whether or not court is actually in session. None of the foregoing activities are allowed in the jury rooms, the offices of the judges, or in any room, hallway or corridor of the floor of the building in which the courtrooms are located.
- (b) **Exception.** The court may except ceremonial, investiture and educational proceedings and the actions of its personnel while acting in an official capacity. ~~and investitive proceedings from this prohibition.~~
- (c) **Official Court Reporters.** Official court reporters are not prohibited by this rule from making sound recordings for the sole purpose of discharging their official duties. No recording made for that purpose shall be used for any other purposes by any person. Personnel of the court are not prohibited by this rule from making sound recordings in the course of their work.

## **RULE 5080-1: FEES - GENERAL**

Unless otherwise ordered by the court, the clerk shall not be required to render any service for which a fee is prescribed, either by statute or by the Judicial Conference of the United States, including the acceptance of a document for filing, unless the fee for that service is paid in advance or an order is entered pursuant to 28 U.S.C. §1915(a) granting in forma pauperis status for an adversary proceeding or appeal.

### **Comment**

Filing fees for adversary proceedings and appeals are authorized by 28 U.S.C. §1930(b) and set forth in the Judicial Conference Schedule of Fees.

Upon application and order of the court, adversary proceedings and appeals may be filed in forma pauperis. As required by 28 U.S.C. §1915(a), a party seeking to proceed in forma pauperis must file an affidavit: (1) advising that the person is unable to pay the fee or give security therefor and (2) stating the nature of the appeal and the affiant's belief as to entitlement to relief.

## **RULE 6004-1: SALE OF ESTATE PROPERTY**

**(a) Appraisal Filed With the Court Prior to Sale**

Unless otherwise ordered by the court, when an appraiser has been appointed by the court, the appraisal of the property shall be filed no later than two days prior to **the return date of the motion to approve the ~~any scheduled~~** sale of the property. Property subject to an appraisal shall not be sold until after the appraisal has been filed with the clerk and served upon the United States trustee.

**(b) Access and Confidentiality of Filed Appraisal**

**Prior to the sale, the appraisal should never be filed electronically.** The appraisal shall be submitted in a sealed envelope marked "confidential - appraisal." The envelope shall also include the complete caption of the case/proceeding and identification of the property appraised. The clerk, the United States trustee and the appraiser shall maintain the confidentiality of the appraisal, unless otherwise directed by the court.

**©) Sale Outside the Ordinary Course of Business in a Chapter 11 Case**

In a chapter 11 case, if the debtor or trustee seeks authority to sell property of the estate pursuant to 11 U.S.C. §363(b) prior to the entry of an order of confirmation, the notice of motion shall contain a clear and conspicuous statement to that effect. In addition to the information required under FRBP 2002©), the notice of the hearing shall specify the extent to which, if any, the proceeds of sale shall be used to benefit each class of creditors, the extent of the debtor's liabilities and the estimated net value of any of the remaining assets not subject to the proposed sale. The notice shall further articulate the business justification for disposing of estate assets outside the ordinary course of business before a disclosure statement has been approved or a plan confirmed.

**Comment**

This rule requires special notice of a proposed sale outside the ordinary course of business. Since the proposed sale is outside the normal procedural route for proposal, adoption and confirmation of a proposed plan, it requires special scrutiny by the court. See Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063 (2d Cir. 1983).

**(a) Motions for Sale of Real Property.**

The debtor shall file a motion for approval of the sale of real property after a contract of sale is procured. The motion shall be on notice to all parties in interest and shall state the following:

- (1) whether or not the debtor's plan has been confirmed;
- (2) the address of the property;
- (3) whether or not the property is the debtor's residence;
- (4) the sale price;
- (5) if the property has been appraised and, if so, when and by whom;
- (6) the name of each mortgage or lienor and the approximate payoff for each lien;
- (7) the approximate amount of unpaid real estate taxes;
- (8) the name of any realtors and the proposed real estate commission, and, if none, the marketing efforts;
- (9) the proposed attorney's fee payable upon sale, a list and explanation of other proposed deductions from the sale proceeds and the approximate amount of closing costs;
- (10) a summary of the total deductions from the sale proceeds and the approximate amount of the sale proceeds to be paid into the plan; and
- (11) whether or not the plan provided for a sale.

**(b) Disposition of Personal Property Valued at Less Than \$2,500.**

To sell or otherwise dispose of personal property with a value of \$2,500 or less, the debtor shall make written application to the trustee and any other creditor with a lien on the property. The debtor shall not file the application with the clerk. If approved by the trustee, the debtor may dispose of or sell the property in accordance with the terms and conditions approved by the trustee. The trustee shall file the approval and application with the clerk. If not approved by the trustee, the debtor may file a motion to dispose of or sell property of the estate, other than real property, and the motion shall contain as an attachment a copy of the trustee's denial. Said motion, if necessary, shall be on notice to all parties in interest.

**©) Fees.**

All professionals attendant to the sale of real property must have their fees approved by the court prior to payment.



**RULE 6005-1: APPRAISERS AND AUCTIONEERS**

The following shall apply to auctioneers only.

**(a) Compensation.**

Unless otherwise ordered by the court for cause shown, compensation and reimbursement of expenses shall be allowed to an auctioneer for sale of property as hereinafter specified.

- (1) The maximum allowable commissions on the gross proceeds of each sale are as follows:
  - (A) 10% of any gross proceeds of sale on the first \$100,000 or less;
  - (B) 5% of any amount in excess of \$100,000 but not in excess of \$200,000; and
  - ©) 2.5% of any amount in excess of \$200,000.
- (2) The auctioneer shall be reimbursed for reasonable and necessary expenses directly related to the sale, including bond or blanket bond premium cost attributable to said sale, labor, printing, advertising and insurance, but excluding worker's compensation, social security, unemployment insurance or other payroll taxes. If directed by the trustee to transport goods, the associated costs shall be reimbursable. Unless the court orders otherwise, an auctioneer shall be reimbursed for a blanket bond at the rate of \$100 per case or 10% of the gross proceeds from an auction, whichever is less, less any amounts previously reimbursed for said bond.

**(b) Purchase Prohibited.**

An auctioneer or officer, director, stockholder, agent or employee of an auctioneer shall not purchase directly or indirectly, or have a financial interest in, the purchase of any property of the estate which the auctioneer has been employed to sell.

**©) Bond.**

An auctioneer employed with court approval shall not act until a surety bond in favor of the United States of America is provided in each estate, at the auctioneer's expense, to be approved by and in such sum as may be fixed by the court, conditioned upon:

- (1) the faithful and prompt accounting for all monies and property which may come into the possession of the auctioneer;
- (2) compliance with all rules, orders and decrees of the court; and
- (3) the faithful performance of duties in all respects.

In lieu of a bond in each case, an auctioneer may be permitted to file a blanket bond covering all cases in which the auctioneer may act. Such blanket bond shall be at the expense of the auctioneer, shall be in favor of the United States of America and shall be in an amount sufficient to cover the aggregate appraised value of all property to be sold.

**(d) Report of Sale**

The auctioneer shall file a report with the clerk and serve the United States trustee within 30 days after conclusion of the sale. The report of sale shall set forth:

- (1) the time, date and place of sale;
- (2) the gross amount realized by the sale;
- (3) an itemized statement of commissions sought under this rule and disbursements made, including the name of the payee and the original receipts or cancelled checks, or copies thereof, substantiating the disbursements. Where labor charges are included, the report shall specify the name(s) of the person(s) employed, the hourly wage and the number of hours worked by each person. If the cancelled checks are not available at the time the report is filed, then the report shall so state, and the cancelled checks shall be filed as soon as they become available;
- (4) where the auctioneer has a blanket insurance policy covering all sales conducted for which original receipts and cancelled checks are not available, an explanation of how the insurance expense charged to the estate was allocated;
- (5) the names of all purchasers at the sale;
- (6) the sign-in sheet, indicating the number of people attending the sale;
- (7) the disposition of any items for which there were no bid;
- (8) the terms and conditions of sale read to the audience immediately prior to the commencement of the sale;
- (9) a statement of the manner and extent of advertising the sale and the availability of the items for inspection prior to the sale;
- (10) the amount of sales tax collected; and
- (11) such other information as the court may require.

**(e) Proceeds of the Amount of Sale.**

Unless otherwise ordered by the court, the proceeds of sale less the auctioneer's reimbursable expenses, shall be turned over to the trustee as soon as practicable and not later than 20 days from the date of sale or shall be deposited in a separate interest-bearing account. The court retains the jurisdiction to review the auctioneer's reimbursable expenses for reasonableness. In the event, the court determines that a portion of the expenses deducted from the proceeds of the sale are unreasonable, the auctioneer shall be required to return those funds to the trustee.

**(f) Application for Commissions and Expenses**

An auctioneer shall apply to the court for approval of commissions and expenses on not less than 20 days notice as required by FRBP 2002 and Local Bankruptcy Rule 2002-1. No such application shall be granted unless the report referred to in subsection (d) of this rule has been filed.

**RULE 6007-1: ABANDONMENT [DISPOSITION OF PROPERTY]**

- (a) The trustee may place in storage, at the expense of the estate, the debtor's books, records and papers. Upon issuance of the final decree, the trustee may return the debtor's books, records and papers to the debtor or its principal(s).
- (b) The trustee may dispose of all the debtor's records in the trustee's possession,

including debtor's books, records and papers, after issuance of the final decree, providing that debtor's books, records and papers have been first offered to the debtor.

- ©) The trustee may retain those documents and materials which, in the trustee's judgment, may be useful in supporting performance of the trustee's duties.

**RULE 7003-1: COVER SHEET**

A complaint filed to commence an adversary proceeding shall be accompanied by an Adversary Proceeding Cover Sheet (Form B 104, Administrative Office of the U.S. Courts).

## **RULE 7004-2: SUMMONS**

~~All complaints submitted to the clerk for filing shall be accompanied by a summons for signature and seal. If the summons is in proper form, the clerk shall sign, seal and issue it to the plaintiff for service on the defendant. A summons, or a copy of the summons if addressed to multiple defendants, shall be provided by the plaintiff in sufficient number for each defendant to be served.~~

Complaints may be electronically filed. A summons, however, must be presented conventionally to the clerk's office. If the summons is in proper form, the clerk's office will sign, seal and issue the summons to the plaintiff for service on the defendant. The plaintiff or third-party plaintiff or their counsel will be responsible for serving the summons and the complaint. A summons, or a copy of the summons if addressed to multiple defendants, shall be provided by the plaintiff in sufficient numbers for each defendant to be served.

#### Comment

Practitioners are referred to FRBP 7004 for acceptable methods of service.

#### **RULE 7016-1: PRETRIAL PROCEDURES**

Insofar as Fed.R.Civ.P. 16(b), made applicable to bankruptcy by FRBP 7016, mandates a scheduling order, it shall not be applicable to adversary proceedings.

### **Comment**

The court will issue pretrial orders, as appropriate. This rule should be read in conjunction with Local Bankruptcy Rule 7026-1.



## **~~RULE 7024-2: UNCONSTITUTIONALITY, CLAIM OF~~**

~~———— If within any adversary proceeding, contested matter or action to which neither the United States nor any agency, officer or employee thereof (other than the United States trustee) is a party, a party draws into question the constitutionality of an Act of Congress or any statute of any state affecting the public interest, that party shall contemporaneously file with the court a separate statement referencing the existence of such question, giving the full caption of the case, the adversary proceeding number, if any, a reference to the questioned statute sufficient for its identification and a concise summary stating the issues upon which it is claimed that the statute is unconstitutional.~~

### **Comment**

This rule is intended to facilitate compliance with 28 U.S.C. §2403 and Fed.R.Civ.P. 24.

**RULE 7026-1:****DISCOVERY - GENERAL****(a) Required Disclosure**

The affirmative disclosure required to be made by a party under Fed.R.Civ.P. 26(a)(1), (2) and (3) as incorporated by FRBP 7026, without awaiting a discovery request, shall ~~not~~ be operative unless specifically ordered in a given proceeding.

**(b) Meeting of Parties**

Unless otherwise ordered by the court, the provisions of Fed.R.Civ.P. 26(d) and (f), as incorporated by FRBP 7026, insofar as they mandate an actual meeting of the parties 14 days before a scheduling conference, require the submission of a written report and prohibit a party from seeking discovery from any source prior to any such meeting, shall not apply to contested matters or adversary proceedings.

**Comment**

This ~~"opt-out"~~ provision permits the court to ~~implement~~ ~~limit the~~ provisions of Fed.R.Civ.P. 26, as made applicable to bankruptcy by FRBP 7026, on a case by case basis.—~~as deemed appropriate.~~ As a general rule, however, the times specified within the federal rule do not easily conform to the time frame within which contested matters governed by FRBP 9014 are heard, nor, for how adversary proceedings are handled.

This rule should be read in conjunction with Local Bankruptcy Rule 7016-1.

**RULE 7026-2:****DISCOVERY MOTIONS****(a) Required Affidavit**

No discovery motion shall be heard by the court unless counsel for the movant files with the court an affidavit at or prior to the hearing on the motion certifying that counsel for the movant has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the issues raised by the motion and that counsel have been unable to reach such an agreement. If part of the issues have been resolved by agreement, the affidavit shall identify the issues so resolved and the issues remaining unresolved.

**(b) Decision Without Hearing**

A routine motion to compel answers to interrogatories and to compel compliance with a request for production under Fed.R.Civ.P. 34, wherein it has been averred that no response or objection has been timely served, may be summarily granted or denied by the court without awaiting response.

**RULE 7033-1:****INTERROGATORIES TO PARTIES**

The automatic limitation to 25 in number of written interrogatories which may be served upon a party contained in Fed.R.Civ.P. 33(a) as incorporated by FRBP 7033 shall ~~not~~ apply in bankruptcy proceedings, **unless ordered otherwise or consented to by the parties.**

**Comment**

Revision of Fed.R.Civ.P. 33 to limit the number of interrogatories to "25 in number including all discrete subparts" corresponded to the simultaneous revision of Fed.R.Civ.P. 26(a)(1)-(3) requiring affirmative disclosure of much of the information previously obtained by interrogatory. ~~Since by Local Bankruptcy Rule 7026-1 the court has exercised its right to opt-out of the affirmative disclosure requirement of Fed.R.Civ.P. 26, made applicable in bankruptcy by FRBP 7026, the court has correspondingly suspended the automatic limitation on the number of interrogatories that can be propounded. Nothing in this rule, however, limits a party's right to seek a protective order under Fed.R.Civ.P. 26(c) as incorporated by FRBP 7026, deemed necessary to protect a party from annoyance, oppression or undue burden or expense.~~

**RULE 7056-1:****SUMMARY JUDGMENT**

On a motion for summary judgment pursuant to Fed.R.Civ.P. 56, there shall be annexed to the notice of motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue, with specific citations to the record.

The papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue, with specific citations to the record where the factual issues arise. All material facts set forth in the statement served by the moving party shall be deemed admitted unless controverted by the statement served by the opposing party.

The motion for summary judgment may be denied if the moving party fails to file and serve the statement required by this ~~paragraph~~. Local Rule.

**RULE 7067-1:****REGISTRY FUND**

**(a) Orders for Deposit of Funds Into the Registry**

When the clerk is to hold any money pursuant to a directive by the court in connection with any pending case or proceeding, the order directing the establishment of the registry account shall specify:

- (1) the amount of the funds to be deposited;
- (2) the name and location of the depository institution to receive the funds;
- (3) the type of account in which the monies are to be deposited and the current interest payable on the account;
- (4) the term of the deposit tailored to individual circumstances and maximized to avoid repeated renewals; and
- (5) that deposits and withdrawals from the account can only be made upon further order of the court except for the imposition and collection of the registry fee.

**(b) Deposits In Excess of \$100,000**

If the amount of the deposit is in excess of \$100,000, the clerk's office must have 30 days advance notice prior to the receipt of the monies in order to arrange proper collateralization.

**©) Registry Fee**

The clerk shall deduct from any interest paid on registry funds a registry fee as authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office. The fee shall be collected periodically as interest accrues and shall be immediately deposited upon collection in the United States Treasury.

**(d) Orders For Withdrawal of Registry Funds**

At the time of intended disbursement of registry monies, an order is to be submitted to the court which shall contain the following information:

- (1) the name and address of the person(s) to receive the monies;
- (2) the amount of principal and interest each is to receive; and
- (3) the social security number or taxpayer ID number for each recipient of funds.

**Comment**

This rule helps to implement FRBP 7067 pertaining to the deposit of money into court. Since the Federal Deposit Insurance Corporation only insures deposits up to \$100,000, if the deposit exceeds that sum the depository designated must have sufficient collateral to pledge as outlined in 31 C.F.R. Part 202 (Treasury Circular 176).

The fee charged against interest earned on the registry funds has been 10% since December 1, 1990. It is subject to change and is published periodically by the Director of the Administrative Office in the Federal Register.

Social security and/or taxpayer ID numbers of the payees are required in the order of disbursement for the depository institution's tax reporting records.

**RULE 7090-1: DISCONTINUANCE AND SETTLEMENT OF ACTIONS OBJECTING TO  
DISCHARGE AND DISCHARGEABILITY OF DEBTS**

No adversary proceeding to determine the dischargeability of a debt or objection to discharge shall be settled, discontinued or withdrawn except upon court approval and in the case of an objection to discharge after notice to the trustee, the United States trustee and such other persons as the court may direct in accordance with FRBP 7041.

Court approval is conditioned upon full disclosure as to the circumstances of any settlement, including the terms of any agreement entered into between the creditor and the debtor. If the action is not settled or withdrawn in the presence of the court on the record, then plaintiff shall file a proposed order of discontinuance accompanied by a stipulation fully disclosing the circumstances of any settlement and any consideration promised or given, directly or indirectly, for the withdrawal of the action. The court may alternatively direct the defendant to prepare and file the stipulation required by this rule.

### **Comment**

See 18 U.S.C. §152 and FRBP 7041. This rule shall also apply without regard to whether a dispute is settled through mediation.

### **RULE 7091-1: ADJOURNMENTS**

Requests for adjournments of dates fixed for trials and evidentiary hearings shall be presented to the judge to whom the case has been assigned on notice to all parties affected.



~~Adjournments shall not be granted, except for good cause shown. upon a showing to the court of exceptional circumstances.~~

~~Any adjournment letters and status conference requests filed conventionally or electronically shall also be faxed to Chambers in Albany and Courtroom Services in Utica.~~

- (a) ~~Utica Only - Trials and evidentiary hearings may be adjourned one time on consent of the parties. The consent letter shall be sent to Courtroom Services. A further adjournment shall not be granted, except for good cause shown. Any further request should be sent to Courtroom Services.~~
- (b) ~~Albany Only - Trial and evidentiary hearing adjournments shall not be granted, except upon a showing to the court of exceptional circumstances. Any such request shall be sent to Chambers.~~

~~All correspondence to Chambers and/or Courtroom Services regarding adjournments shall be electronically filed. The electronic filing is then to be followed with a fax to Chambers and/or Courtroom Services.~~

#### **RULE 8005-1: STAY PENDING APPEAL [SUPERSEDEAS BOND]**

- (a) **Amount When Money Judgment Only.** A supersedeas bond, where the judgment is for a sum of money only, shall be in the amount of the judgment, plus 11% to cover interest and such damages for delay as may be awarded, ~~plus \$250 to cover costs.~~ **plus an amount to be**

determined by the court, to cover costs.

- (b) **Amount Fixed by the Court.** When the stay may be effected solely by the giving of the supersedeas bond, but the judgment or order is not solely for a sum of money, the court, on notice, shall fix the amount of the bond. In all other cases, it may, on notice, grant a stay on such terms as to security and otherwise as it may deem proper.
- (c) **Objections.** Upon approval, a supersedeas bond shall be filed with the clerk, and a copy thereof, with notice of filing, promptly served on all parties affected thereby. If the appellee raises objections to the form of the bond, or to the sufficiency of the surety, the court shall hold a hearing on expedited notice to all parties.

#### **~~Rule 8013-1. Disposition of Appeal~~**

~~———— If an order or judgment of the appellate court remands a proceeding for further action, a motion for such further proceedings must be filed by the successful party on appeal within ten days of entry of such order.~~



## **RULE 8016-2: NOTICE OF ORDER OR JUDGMENT - APPEAL**

An order or judgment of an appellate court, when filed in the office of the clerk, shall automatically become the order or judgment of the court and be entered as such by the clerk without further order.

~~The Rules of the Bankruptcy Appellate Panel Service of the Second Circuit apply in this district.~~

**RULE 9001-1: DEFINITIONS**

In these Local Rules of Bankruptcy Practice:

- (1) "administrative order" means any order signed by the bankruptcy judges amending, modifying or supplementing procedures of the United States Bankruptcy Court for the Northern District of New York;
- (2) "Appellate Court" means the ~~BAP or the~~ district court where the appeal was taken;
- (3) "Bankruptcy Code" or "Code" refers to the Bankruptcy Reform Act of 1978, as amended and set forth in Title 11 of the United States Code;
- ~~(4) — (4) "BAP" means the Bankruptcy Appellate Panel Service of the Second Circuit;~~
- (4) "FRBP" means the Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms promulgated pursuant to 28 U.S.C. §2075 in effect on the effective date of these Local Rules of Bankruptcy Practice and as thereafter amended or enacted;
- (5) "Chief Judge" means that individual designated to serve by the district court pursuant to 28 U.S.C. §154(b);
- (6) "clerk" means clerk or deputy clerk of the court;
- (7) "court" means the United States Bankruptcy Court for the Northern District of New York established by 28 U.S.C. §151 and §152 or, with respect to a case which has not been referred, means the district court;
- (8) "district clerk" means clerk or deputy clerk of the district court;
- (9) "district court" means the United States District Court for the Northern District of New York;
- (10) "district judge" means any United States District Judge appointed to or sitting by designation in the district court;
- (11) "District Rules" means the Local Rules of the United States District Court for the Northern District of New York, as amended;
- (12) "judge" means any bankruptcy judge appointed to or sitting by designation in the court or, with respect to a case which has not been referred, it means district judge;
- (13) "United States trustee" means the United States trustee, acting United States trustee, assistant United States trustee or attorney therefor for the Northern District of New York, Region 2; and
- (14) "United States Trustee Fee Guidelines" means the United States Trustee Guidelines for

Reviewing Applications For Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330 adopted by The Executive Office for United States Trustees on January 30, 1996, or as subsequently revised. These Guidelines adopted in 1996 superseded those previously issued on March 22, 1995.

The meanings of other words and phrases used in these Local Bankruptcy Rules shall, unless inconsistent with the context, be construed in accordance with the Bankruptcy Code and Federal Rules of Bankruptcy Procedure.

### **Comment**

These definitions apply only to the interpretation of these Local Bankruptcy Rules.

#### **RULE 9004-1: PAPERS - REQUIREMENTS OF FORM -**

~~(a) — In conformity with the District Rules and as required by the Judicial Conference, all papers presented for filing shall be on standard size 8 ½" x 11" white, opaque paper, plainly typed or written on one side and properly paginated at the bottom of each page, with not less than one and one-half spaces between lines except for quoted material. All Originals and duplicate copies of papers with the exception of matrices, papers shall be pre-punched with two normal-size holes (approximately 1/4 inch diameter), centered 2 3/4 inches apart, 1/2 to 5/8 inch from the top edge of the document. All multiple paged documents shall be stapled. —~~

~~(b) — Backers. The original of all proposed orders must have a backer.~~

(a) In conformity with the District Rules and as required by the Judicial Conference, all papers presented for filing must be on standard 8 ½ x 11 inch white, opaque paper, plainly typed or written on one side and properly paginated at the bottom of each page, with not less than one and one-half spaces between lines except for quoted material.

(b) Backers are not required on proposed orders submitted to the Court.

#### **RULE 9004-2: CAPTION - PAPERS, GENERAL**



Papers presented for filing shall bear the name of the court, the title of the case, case number and chapter number assigned thereto, the debtor's **redacted** social security number and/or employer identification number, and, if pertinent to an adversary proceeding, the adversary proceeding name and assigned number. The papers shall additionally identify the document by a short title.

### **Comment**

Signing and verification of papers is governed by FRBP 1008 and 9011. It requires that all papers filed on behalf of a party must be signed by an individual attorney and state an office address and telephone number. A party not represented by an attorney shall sign all papers and state the party's address and telephone number.

## **RULE 9010-1: ATTORNEYS - NOTICE OF APPEARANCE**

Unless otherwise specifically provided, the filing and service of a notice of appearance in a case (as distinguished from the filing of a notice of appearance in an adversary proceeding) containing a request for service of copies of papers filed in the case will be deemed to be a request for only such papers and notices which these Local Bankruptcy Rules or the Federal Rules of Bankruptcy Procedure require to be served on any party requesting the same.

### **Comment**

There is no basis in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure for a party to require service upon it of all papers served in a case. This rule allows a party to avoid the unnecessary expense of service upon a party not otherwise entitled to service. Service of papers in an adversary proceeding is governed by FRBP 7005.

### **RULE 9010-3: ATTORNEYS - DEBTOR CORPORATIONS**

- (a) A debtor corporation shall not be permitted to file a petition or proceed under chapters 7, 9,

11 or 12 without representation by an attorney duly admitted to the Northern District of New York.

- (b) In the event that counsel for a debtor corporation is permitted to withdraw, the case is subject to automatic dismissal unless new counsel is substituted.

### **Comment**

This rule should be read in conjunction with Local Bankruptcy Rule 9011-1.

### **RULE 9011-1: ATTORNEYS - DUTIES**

Unless otherwise determined by the court, an attorney for debtor is required to represent the debtor in all matters related to the bankruptcy case including, but not limited to, defending adversary

proceedings commenced pursuant to 11 U.S.C. §§523 and 727, attending section 341 meetings, opposing motions to lift stay when appropriate and attending contested confirmation hearings.

## **RULE 9011-2: PRO SE PARTIES**

An individual appearing pro se shall file with such individual's initial notice or pleading a designation of the individual's residence address and mailing address, if different, and telephone number where the party can be reached during daytime hours. An individual appearing pro se who is not a resident of the Northern District of New York may be required by the court to designate a mailing address within the Northern District of New York. This requirement shall not apply to an individual who has appeared solely for the purpose of filing a proof of claim or interest.

## **RULE 9011-3                      SIGNATURES AND ELECTRONIC FILING -**

- (a)     **Original signature and electronic filing.** Petitions, lists, schedules and statements, amendments, pleadings, affidavits, and other documents which must contain original signatures or which require verification under FRBP 1008 or an unsworn declaration as provided in 28 U.S.C. § 1746, may be filed electronically by attorneys registered in the *System*.
- (b)     **Format of electronic signature.** A pleading or other document electronically filed shall indicate a signature, in the format “/s/**name**” unless the document has been scanned and shows the actual signature.
- (c)     **Unregistered attorneys using a registered attorney’s login.** Attorneys who are not registered with the Bankruptcy Court of the Northern District of New York and who do not have a login and password provided by the Court are not permitted to electronically file documents using the login and password of a registered attorney. The attorney login name and attorney name shown on a filed document must match.
- (d)     **Retention of original signature.** A copy containing an original signature must be retained by the filer for a minimum of two (2) years after the closing of the case and all time periods for appeals have expired unless the Court orders a different period. In adversary proceedings, the parties shall maintain the original documents for minimum of two (2) years after the proceeding ends and all time periods for appeals have expired unless the Court orders a different period. These retention periods do not affect or replace any other periods required by other applicable laws or rules. Upon request of the court, the filer must provide original documents for review. Compliance with FRBP 9011 is required.
- (e)     **Electronic signature on stipulations or other documents requiring multiple signatures.** The following procedure applies when a stipulation, which does not require an order or another document requires two or more signatures:
  - 1.       The filer shall initially confirm that the content of the document is acceptable to all persons required to sign the document and shall obtain the physical signatures of all parties on the document. For purposes of this rule, physical, facsimile or electronic signatures are permitted. Compliance with FRBP 9011 is required.
  - 2.       The filer shall file the document electronically, indicating each signature using the format “/s/**name**” unless the document has been scanned and shows the actual signature.
  - 3.       The filing party originating the document shall maintain the original signed document as provided for in subsection (d) above.

## **RULE 9013-1:    MOTION PRACTICE**

- (a) **Time and Manner.** Unless otherwise ordered by the court, notice of any motion to be heard by the court shall be provided in the time and manner prescribed by the Federal Rules of Bankruptcy Procedure, Local Bankruptcy Rules, and the **Administrative Procedure**.
- (b) **Identification of hearing date and time** on motions. In addition to being located in the body of the notice of hearing, information regarding the hearing date, hearing time and hearing place is to be placed at the top of the page on all motions. The information is to be placed immediately above the case number information as shown in the example below.

Example

<b>UNITED STATES BANKRUPTCY COURT</b> <b>NORTHERN DISTRICT OF NEW YORK</b> -----	<b>HEARING DATE: October 21, 1997</b> <b>HEARING TIME: 10:00 A.M.</b> <b>HEARING PLACE: Syracuse</b>
--	--

**In re:**

**EASTER ISLAND PIZZA, Inc.**

**Case No. XX - XXXXX**

**Debtor.**

**Chapter 11**

-----

**OBJECTION BY THE UNITED STATES TRUSTEE  
TO THE DEBTOR'S APPLICATION TO ASSUME  
LEASES OF NON-RESIDENTIAL REAL PROPERTY**

- (c) **Service of motions.** Whenever a pleading or other paper is filed electronically, the *System* will generate a “Notice of Electronic Filing” to the filing party and any other party who has requested electronic notice in that case.

If a recipient of service is a registered participant in the *System*, the Clerk’s e-mailing of the “Notice of Electronic Filing” shall be the equivalent of service of the pleading or other paper by first class mail, postage prepaid.

Service of the “Notice of Electronic Filing” on a party who is not a registered participant in the *System* may be accomplished by e-mail, subject to the additional service requirements of the paragraph below.

A party who is not a registered participant of the *System* is entitled to a paper copy of any electronically filed pleading or paper. The filing party must therefore, provide the non-registered party with the pleading according to the FRBP and these local rules.

A certificate of service on all parties entitled to service or notice is still required when a

party files a document electronically. The certificate must state the manner in which service or notice was accomplished on each party so entitled. Sample language for a Certificate of Service can be found in the Administrative Procedure.

- (d) **Chambers Copy.** A Chambers Copy in paper format for chambers is required for the following matters. The copy must be clearly marked as **ECF CASE - CHAMBERS COPY**. The front page of each Chambers Copy must indicate the date and time of the relevant hearing and is to be submitted contemporaneously with the electronic filing of the motion. The Chambers Copy need not contain a copy of the original signature. Unless directed by the Court, copies should not be faxed to Chambers or Courtroom Services. Copies should be sent via the mail or hand delivered.

**Utica Chambers:**

- (1) Notice of Hearing, Motion, application and certificate of service, and Chapter 7 Final Meeting Notices;
- ~~(2) Opposition, response, or any pleading relating to a hearing;~~
- ~~(3) Opposition to disclosure statements in a chapter 11;~~
- ~~(4) Opposition to confirmation of a plan regarding any chapter;~~
- (2) All pleadings filed in an adversary proceeding;
- (3) Pretrial statements;
- (4) Memoranda of Law or documents filed in regard to a submitted matter;
- (5) All documents regarding an appeal, withdrawal of reference, or FRBP 9033 objections.

**Albany Chambers:**

- (1) Notice of Hearing, Motions, applications, and certificates of services, excluding Ch. 13 Standing Trustee's motions to dismiss, motions to determine/expunge claim, motions to determine value and Chapter 7 Final Meeting Notices;
- (2) Opposition, response, or any pleading relating to a hearing;
- (3) Opposition to disclosure statements in a chapter 11;
- (4) Opposition to confirmation of a plan regarding any chapter;
- (5) Pretrial statements;
- ~~(6) All documents regarding an appeal, withdrawal of reference, or FRBP 9033 objections;~~
- (6) Memoranda of Law or documents filed in regard to a submitted matter.

- (e) **Timeliness of Service.** The filing of documents electronically does not alter the filing deadline for that document. Generally, filings are considered timely if received by the Court before midnight on the date set as a deadline, unless the judge or LBR specifically require an earlier filing, such as close of business. Any motions filed electronically on the last day for filing pursuant to LBR 9013-1 must be filed by 4:00 PM Eastern Standard Time.

Unless otherwise specified in the Federal Rules of Bankruptcy Procedure (particularly FRBP 2002, 3007 and 4007), these Local Bankruptcy Rules, the **Administrative Procedure** or as



ordered by the court, all motions shall be served at least 15 days before the return date of the hearing. **All written motions in Chapters 12 and 13 cases shall be served upon the trustee.** The moving party shall file the original motion papers, **electronically or conventionally**, with the clerk's office ten days prior to the return date of the motion and **file** a certificate of service, **electronically or conventionally**, no later than seven days prior to the return date of the motion. Failure to file the original motion papers and proof of service may result in the motion not appearing on the court's calendar.

**(f) Answering Papers.**

**(1)** Unless otherwise ordered by the court for cause shown, answering papers in opposition shall be filed and served for every written motion other than one which may be considered ex parte or on shortened notice as ordered by the court. Answering papers and any opposing memoranda shall be served and filed so as to be received no later than three business days before the return date of the motion **and shall identify the hearing date, time and place at the top of the page.**

**(2)** In the event the court hears oral opposition without papers and adjourns the hearing, answering papers substantiating the oral opposition shall be filed and served within three business days of the original hearing date.

**(3)** **Any answering papers filed electronically or conventionally on the last day for filing pursuant to LBR 9013-1(f)(1) must be filed by 4:00 PM Eastern Standard Time.**

**(g) Reduction of Time.** A request for an order reducing any specified notice period shall be made by application to the appropriate judge for an expedited hearing on the motion pursuant to FRBP 9006©). Such application shall contain a clear and specific showing by affidavit of good and sufficient reasons for reduction of the notice period.

**(h) Notification to Court Regarding Expedited Matters.** In expedited matters occurring in **Albany**, the movant shall contact Courtroom Services staff or Chambers staff by phone as soon as possible after filing the item needing expedited treatment.

In expedited matters occurring in **Utica**, the movant shall contact the Judge's Judicial Assistant ~~Chambers staff only~~ by phone **before as soon as possible after filing the item needing expedited treatment.** Compliance with FRBP 9006 is required.

**(i) Rule or Statutory Basis.** A request for an order, whether brought on by motion or application, shall specify the rule or statute upon which the motion or application is predicated, and the authority for the entry of the proposed order. Failure to provide the basis for relief sought is cause for the court to deny the relief requested.

**(j) Adjournment.** Unless otherwise ordered by the court, any party who intends to seek an adjournment of a motion or any proceeding relating thereto shall make the request to the court, after attempting to obtain consent of opposing counsel, stating the reasons why

adjournment is requested and whether any previous requests for adjournment have been made. Any such request must be made no later than three days prior to the return date, except for good cause shown.

The party obtaining the adjournment shall confirm such adjournment in writing, file the written confirmation with the court and send copies to all parties who have filed and served responding papers. Adjournments will not be automatically granted on stipulation of counsel but may be granted by the court on a showing of good cause.

Any adjournment letters and status conference requests filed conventionally or electronically shall also be faxed to Chambers in Albany and Courtroom Services in Utica.

- (k) **Withdrawal.** Any movant who does not intend to pursue a motion shall notify **in writing** the court and all parties who have filed and served responding papers at the earliest possible date.
- (l) **Consent to Relief.** Any movant who has obtained consent to the relief requested of all necessary parties shall notify the court at the earliest possible date. Where the parties have agreed to a stipulation, a separate proposed order must be submitted for approval by the court. **Consensual Orders in Chapter 12 and 13 cases shall provide for the Trustee's consent and signature thereon.**
- (m) **Motion for Relief.** Where a motion is made for the relief set forth in subsection (a)(1), (2), (3), (5) or (8) of Local Bankruptcy Rule 2002-1 and the object of the motion and its purposes are clearly and unambiguously stated in the notice of motion, accompanying affidavits, applications or exhibits need not be served on all parties or creditors. **The notice of motion, however, as long as the notice of motion must clearly indicate provides** that any party is entitled to receive said applications, exhibits or affidavits without charge from the movant upon request **and must provide parties or creditors with exact information on how to request and obtain accompanying affidavits, application or exhibits.**

Complete copies of all motions and accompanying applications, affidavits or exhibits shall be served upon ~~the court~~, the United States trustee's office, any official committees, opposing counsel and any party which may directly be adversely affected by the granting of the requested relief. **Pursuant to the Administrative Procedure and Local Rule 9070-1 (Exhibits Attached to Pleading) attachments may be summarized and only the relevant excerpts electronically filed.**

### Comment

Pursuant to FRBP 9006(a), the day of service or mailing is excluded when computing the notice period. The 15 day service requirement provided by subsection (e) of this rule does not apply

to motions for cram-down as governed by Local Bankruptcy Rule 3020-1©).

**RULE 9013-2: BRIEFS & MEMORANDA OF LAW**

See Local Bankruptcy Rule 9013-1(f)(1) (Motion Practice: Answering Papers).



**RULE 9013-3: CERTIFICATE OF SERVICE - MOTIONS**

See Local Bankruptcy Rule 9013-1©) (Motion Practice: Service).

#### RULE 9013-4: DEFAULT MOTION PRACTICE

- (a) **Default Motions.** All motions listed in subsection (b), if pursued on a default basis, shall clearly and conspicuously contain the following paragraph (which may be single-spaced):

PURSUANT TO BANKRUPTCY RULE 9014 AND LOCAL BANKRUPTCY RULE 9013-1, IF YOU INTEND TO OPPOSE THE MOTION, YOU MUST SERVE ON THE MOVANT'S COUNSEL AND FILE WITH THE CLERK OF THE BANKRUPTCY COURT, WRITTEN OPPOSITION TO THE MOTION NOT LATER THAN THREE (3) BUSINESS DAYS PRIOR TO THE RETURN DATE OF THIS MOTION. IN THE EVENT NO WRITTEN OPPOSITION IS SERVED AND FILED, NO HEARING ON THE MOTION WILL BE HELD BEFORE THE COURT ON THE RETURN DATE, AND THE COURT WILL CONSIDER THE MOTION AS UNOPPOSED.

- (1) **Timely Opposition not Filed.** If no opposition is timely filed with the clerk and served upon movant's counsel as outlined in the above notice, the motion will not appear on the motion calendar of the court on the return date, and the motion will be considered by the court without the necessity of any appearance by movant's counsel.
  - (2) **Proposed Order.** ~~Unless movant anticipates written opposition to the motion, a proposed order should be submitted with the moving papers to the Court. Unless~~ otherwise ordered by the court, all proposed orders shall be submitted electronically *after* the return date of the motion.
  - (3) **Timely Opposition Filed.** If written opposition to the motion is served and filed at least three business days prior to the return date, the motion will appear on the court's motion calendar on the return date and movant will be required to appear in support of the motion.
- (b) The default motion practice provided in subsection (a) applies to the following motions:
- (1) Abandonment of Property (11 U.S.C. §554(b));
  - (2) Allowance of Administrative Expenses Other Than Professional Fees (11 U.S.C. §503(b));
  - (3) ~~Approve Employment of Professionals (11 U.S.C. §327)~~ Allowance of administrative expenses for professional fees in a Chapter 13 case which are not in excess of \$500.00-~~\$1000.00~~, provided however, that said fees are requested for services rendered in connection with a motion brought by default under this Rule;

- (4) Approve Settlement of Adversary or Contested Matter (FRBP 9019);
- (5) Assume or Reject Executory Contract (11 U.S.C. §365);
- (6) Avoid Judicial Lien and Non-Purchase Money Security Interest (11 U.S.C. §522(f));
- (7) Change Venue (28 U.S.C. §1412);
- (8) Compel Turnover of Property by the Trustee (11 U.S.C. §542);
- (9) Convert or Dismiss Case (11 U.S.C. §§706, 707, 1112(b), 1208, 1307);
- (10) Disallow or Modify Claim (11 U.S.C. §502(b));
- (11) Dismissal for Failure to Pay Filing Fee (FRBP 1006(a));
- (12) Extend Time to Assume or Reject a Nonresidential Lease (11 U.S.C. §365(d)(4));
- (13) Extend Time to File Complaint (FRBP 4004(b), 4007©));
- (14) Extend Time to File Plan and Disclosure (11 U.S.C. §1121(d));
- (15) Extend Time to File Plan - Chapter 12 (11 U.S.C. §1221);
- (16) Extend Time to Pay Filing Fee (FRBP 1006(b));
- (17) FRBP 2004 Exam;
- (18) Hardship Discharge (11 U.S.C. §§1228(b) and 1328(b));
- (19) Objection to Claimed Exemption (FRBP 4003(b));
- (20) Obtain Credit (11 U.S.C. §364(b), ©), (d));
- (21) Postconfirmation Modification of Chapter 12 or 13 Plans (11 U.S.C. §§1229, 1329);
- (22) Reopen Case (FRBP 5010);
- (23) Terminate or Modify Automatic Stay and/or co-debtor stay, provided, however, that the proposed Order includes a provision that any surplus

proceeds obtained by the creditor will be turned over to the Chapter 7, 12 or 13 Trustee (11 U.S.C. §362(d));

- (24) Use Cash Collateral (11 U.S.C. §363(e)); ~~and~~
  - (25) Withdraw as Attorney (Local Bankruptcy Rule 2091-1); ~~and~~
  - (26) Revoke/Reconsider Order of Dismissal , FRBP 9024.
  - (27) In Albany, the following matters are also included in default motion practice.
    - Retention Applications in Chapter 7 Cases (11 U.S.C. 327(e)
    - Motion to waive appearance at § 341 meeting.
- (c) The provisions of Local Bankruptcy Rules 9013-1, 9013-2 and 9013-3 also apply to default motion practice.
- (d) The default motion practice only applies to motions listed in subsection (b). All other motions will continue to require the appearance of movant's counsel, regardless of the existence of any written opposition.

### Comment

Essential to the court granting the default motion is a timely filed certificate of service reflecting proper service of the default motion. In this regard, particular reference is made to FRBP 6007 and to the provisions of FRBP 7004(b)(1)-(10), which are applicable to contested matters pursuant to FRBP 9014, and Local Bankruptcy Rule 9034-1.

Cross-reference: Local Bankruptcy Rule 4001-1.

**RULE 9013-5: ORDERS, INCLUDING EX PARTE ORDERS, ~~AND~~ ORDERS TO SHOW CAUSE AND ORDERS SHORTENING TIME**



- (a) **Ex Parte Orders.** No ex parte order shall be granted unless based on an affidavit or motion showing cause for ex parte relief as well as cause for the relief requested and stating whether a previous application for similar relief has been made.

All ex parte orders must be submitted conventionally to the Court. An application or motion underlying an ex parte order must also be filed conventionally.

- (b) **Proposed Orders.** All proposed orders shall be submitted, unless otherwise ordered by the court, after the return date of the hearing or trial. All proposed orders shall be submitted conventionally to the Court. Once the Court begins receiving orders electronically (through E-Orders), all orders shall be submitted electronically unless otherwise directed by these rules (e.g. ex parte orders). **DO NOT ATTEMPT TO ELECTRONICALLY FILE A PLEADING WHICH CONTAINS A PROPOSED ORDER IN THE BODY OF THE PLEADING.**
- (c) **Proposed Order as Exhibit.** A proposed order can be included with an electronically filed pleading if the proposed order is clearly marked as an “EXHIBIT” only.
- (d) **Orders to Show Cause and Orders Shortening Time.** No order to show cause to bring on a motion or order shortening time will be granted except upon a clear and specific showing by affidavit of good and sufficient reasons why procedure other than by notice of motion is necessary or in the case of a genuine emergency. The Court will not grant orders to show cause or orders shortening time to bring a matter before the Court on less than the minimum number of days notice required by the applicable rule where the reason given is, in the opinion of the Court, law office failure. Law office failure does not provide good and sufficient cause. The papers shall also state whether previous application for similar relief has been made.
- (e) **Prior Notice.** Unless the purpose of an order to show cause would be defeated by prior notice, any party seeking an order to show cause which contains temporary restraining relief shall give an opposing party or, if known, counsel for an opposing party, at least 24 hours prior notice, if possible, of the presentation of the application and order and shall notify an opposing party, via counsel, if known, of the date and time of the proposed presentment of said order to show cause to the court.
- (f) **Application and Order to Pay Filing Fees in Installments.** The only exception to the above sections is the Application and Order to pay Filing Fees in Installments. This may be filed electronically.
- (g) **Original Signature of Judge.** Any order filed electronically by the Court without the actual original signature of a judge has the same force and effect as if the judge had affixed the judge’s signature to a paper copy of the order and it had been entered on the docket in a conventional manner.

- (h) Ministerial Orders.** Any ministerial order filed electronically by the Clerk without the actual original signature of the Clerk has the same force and effect as if the Clerk had affixed his/her signature to a paper copy of the order and it had been entered on the docket in a conventional manner.

### **Comment**

If the underlying relief for which the order to show cause is sought falls within one of the ten categories listed in FRBP 7001, the application for an order to show cause must be brought within the context of a pending, filed adversary proceeding.

As incorporated by FRBP 7065, Fed.R.Civ.P. 65(b)(2) shall be strictly adhered to in any case in which a temporary restraining order is sought.

### **RULE 9015-1: JURY TRIAL**

If the right to a jury trial applies and a timely demand has been filed pursuant to Fed.R.Civ.P. 38(b), the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. §157(e) by jointly or separately filing a statement of consent within fifteen days after the last date to file a pleading.

### **Comment**

As of the effective date of these Local Bankruptcy Rules, the bankruptcy judges were specially designated to conduct jury trials in all proceedings commenced in cases filed under Title 11 of the United States Code by General Order ~~#44~~ 19 of the United States District Court for the Northern District of New York.

**RULE 9019-2: ALTERNATIVE DISPUTE RESOLUTION (ADR)**

The mediation procedure developed by the court, as set forth in the appendix to these rules and incorporated by reference, is intended to facilitate the resolution of disputes without litigation.

## **RULE 9021-1: JUDGMENTS & ORDERS - ENTRY OF -**

- (a) **Orders and Judgments.** Unless otherwise ordered by the court, any oral order of the court, **including any order resulting from a default motion under Local Rule 9013-4(b),** shall be reduced to writing and submitted by the prevailing party no later than 30 days from the date of ruling.
- (b) **Noncompliance.** Failure to comply with subsection (a) of this rule is cause for the court to vacate its oral order, **and** deny the relief requested **and mark the matter off the calendar.**
- (c) **Settlement of Judgment or Order.** Unless otherwise ordered by the court, to settle a judgment or to settle an order shall mean the following:

  - (1) **Service.** The prevailing party or other party as directed by the court shall serve a proposed order or judgment upon the opposing party(ies) who have appeared or have requested service thereof within 15 days of the hearing. Any counter proposal must be served no later than seven days from the date of service. Counsel who served the proposed order or judgment shall submit it to the court, together with any counter proposal.
  - (2) **Required Notice.** All proposed orders or judgments shall be served together with a separate notice which shall clearly and conspicuously contain the following paragraph (which may be single-spaced):

THE ATTACHED PROPOSED ORDER IS BEING SERVED UPON YOU ON (DATE). PURSUANT TO LOCAL BANKRUPTCY RULE 9021-1, IF YOU INTEND TO SUBMIT ANY COUNTER PROPOSAL, YOU MUST SERVE UPON THE UNDERSIGNED A WRITTEN COUNTER PROPOSAL TO THE ORDER OR JUDGMENT ATTACHED HERETO NOT LATER THAN SEVEN DAYS FROM SERVICE HEREOF. IN THE EVENT THAT NO WRITTEN COUNTER PROPOSAL IS RECEIVED, THE ORDER OR JUDGMENT ATTACHED HERETO SHALL BE SUBMITTED TO THE COURT. IF A COUNTER PROPOSAL IS TIMELY RECEIVED, IT SHALL BE SUBMITTED, TOGETHER WITH THE PROPOSED ORDER, TO THE COURT.

- (3) **Submission.** In the event counsel having served the proposed order or judgment does not receive any written counter proposal, then the proposed order or judgment, together with the original notice and a certificate of service, shall be submitted to the court. If a written counter proposal is timely received, it shall be submitted, together with the proposed order, to the court.

### **Comment**

The procedure outlined in subsection ©) is intended to afford the parties the opportunity to review any proposed order or judgment prior to submission. Three days should be added to the times otherwise provided in subsection ©) if notice is given by mail.

## **RULE 9022-1: JUDGMENTS & ORDERS - NOTICE OF**

~~(a) — Whenever notice of entry of a contested order or judgment is required by FRBP 9022, the party submitting said order or judgment shall provide the clerk with a sufficient number of additional copies of such order or judgment, a list of the names and addresses of the parties contesting the entry thereof, including the name and address of the submitting party, and the names and addresses of their respective attorneys. —~~

~~— (b) — Noncompliance. Failure to comply with subsection (a) is cause for the court to vacate its oral order and deny the relief requested.~~

- (a) Notice of Entry.** Whenever notice of entry of a contested order or judgment is required by FRBP 9022, the party submitting said order or judgment shall provide the clerk with a list of the names and addresses of the parties contesting the entry thereof, including the name and address of the submitting party, and the names and addresses of their respective attorneys.
- (b) Delivery of Notice of Entry.** The clerk must mail or deliver by electronic means to the contesting parties, a copy of a judgment or order showing the date the judgment or order was entered. Immediately upon the entry of an order or judgment in a case or proceeding assigned to the Electronic Filing System, the clerk will transmit to Filing Users in the case or proceeding, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by FRBP 9022. The clerk must give notice in paper form to persons who have not consented to electronic service in accordance with the Federal Rules of Bankruptcy Procedure and these local rules.

## **RULE 9025-1: SURETIES**

- (a) **Execution by Surety Only.** Whenever a bond, undertaking or stipulation is required, it shall be sufficient if the instrument is executed by the surety or sureties only.
- (b) **Security for Bond.** Except as otherwise provided by law, every bond, undertaking or stipulation must be secured by: (1) the deposit of cash or government bonds in the amount of the bond, undertaking or stipulation or (2) the undertaking of a corporate surety holding a certificate of authority from the **United States** Secretary of the Treasury.
- (c) **Affidavit by Individual Surety.** In the case of a bond, undertaking or stipulation executed by individual sureties, each surety shall attach an affidavit of justifications, giving the full name, occupation, residence and business addresses, and showing that the individual is qualified as an individual surety under subsection (b) of this rule.
- (d) **Persons Who May Not Act as Surety.** Members of the bar, administrative officers, or employees of this court, the marshal, deputies or assistants, may not act as surety in any case, adversary proceeding, contested matter or action pending in this court.

## **RULE 9027 - 1: REMOVAL AND REMAND**



- (a) **Notice of Removal.** The party filing a Notice of Removal shall give written Notice of Removal to all adverse parties and shall file a copy of the application with the Clerk of the court from which the civil action or proceeding was removed. This notice shall effect the removal, and the parties shall proceed no further in that court unless and until the case is remanded or the Bankruptcy Court orders otherwise.
- (b) **Procedure after Removal.** Within ten (10) days after filing a notice of removal from a state or federal court to this Court, pursuant to Fed. R. Bankr. P 9027 the party filing the notice shall file with the Clerk of the Bankruptcy Court copies of all additional records and proceedings in the state court, together with his/her counsel's verification that they are true and complete copies of all the records and proceedings in the state court proceeding. The copies need not be certified by the state court and the added cost of certification will not be allowed as a cost item under 28 U.S.C. § 1920(4) unless certification is required after an opposing party challenges the accuracy of the copies.
- ©) **List of parties.** Any party removing a civil action to this Court shall file with the Bankruptcy Clerk a list containing the name of each party to the removed case, and the names, addresses and telephone numbers of their counsel, or the party, if pro se
- (d) **Remand.** If at any time before final judgment it appears that the civil action or proceeding was removed improvidently or without jurisdiction, the Bankruptcy Court shall remand the case and may order the payment of just costs. A certified copy of the order of remand shall be mailed by the Bankruptcy Clerk to the Clerk of the court from which the civil action or proceeding was removed, and that court may thereupon proceed with the case.
- (e) **Service.** Service of the notice of removal or remand shall be served on all parties to the removed or remanded case, in the manner provided for in Fed. R. Bankr. P. 7004.

**RULE 9034-1: NOTICE TO AND SERVICE UPON THE UNITED STATES TRUSTEE**

(a) **Notice.** In addition to the notice required to be given to the Office of the United States trustee pursuant to FRBP 2002(k) and FRBP 9034(k), notice of the following matters should also be given to the United States trustee:

- (1) All papers, including pleadings, motions and objections relating to the performance of any chapter 7, 12 or 13 trustee or any trustee or examiner appointed pursuant to 11 U.S.C. §1104 with respect to his/her duties as trustee or examiner. This includes, but is not limited to, all motions to compel trustee to turnover property, to remove trustee and to compel trustee to distribute assets of the estate;
- (2) All papers relating to motions under 11 U.S.C. §362(d) except those relating to personal property in cases pending under chapters 7, 12 and 13 of the Bankruptcy Code; and
- (3) All operating reports required under Local Bankruptcy Rule 2015-2.

(b) **Service.** The time and manner of service shall be in conformity with these Local Bankruptcy Rules, **the Administrative Procedure** and the Federal Rules of Bankruptcy Procedure and shall be effected contemporaneous with service upon all other parties in interest.

(c) **Address.** Where notice to or service upon the United States trustee is required **and is completed by mail**, the following addresses shall be used:

Utica cases: Office of the United States Trustee  
Northern District of New York  
10 Broad Street, Room 105  
Utica, NY 13501

Albany cases: Office of the United States Trustee  
Northern District of New York  
74 Chapel Street, Suite 200  
Albany, NY 12207

### **Comment**

This rule is intended to supplement the requirements of notice to the United States trustee pursuant to FRBP 2002(k), 5005(b) and 9034(k). These addresses are subject to change and should be verified.

## **RULE 9070-1: EXHIBITS**

- (a) **Exhibits Attached to pleadings.** Exhibits and other attachments capable of being electronically imaged should be scanned unless the court permits conventional filing. Attachments may be summarized and only the relevant excerpts electronically filed. The size of an electronic file should be no longer than 2 MB. Attachments larger than 2 MB must be split into separate PDF files and the multiple files attached to the pleading.
- (b) **Marking.** Exhibits offered into evidence must be submitted in hard copy. In an adversary proceeding or a contested matter, counsel for the respective parties shall, to the maximum extent possible, stipulate as to the admissibility of exhibits and present exhibits to the courtroom deputy for marking prior to the trial or evidentiary hearing in accordance with the court's scheduling order.
- (c) **Retention and Return.** Unless otherwise ordered by the court, exhibits shall be retained by the clerk. Following decision or verdict and upon expiration of the time allowed for appeal, or following any appeal, exhibits shall be returned to the party who presented them.

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## **APPENDIX II**

### **MEDIATION PROGRAM FOR THE U.S. BANKRUPTCY COURT, NORTHERN DISTRICT OF NEW YORK**

#### **1.0 PRELIMINARY STATEMENT**

Litigation in bankruptcy cases frequently imposes significant economic and other burdens on parties and often delays resolution of disputes. Alternate dispute resolution procedures have the potential to reduce delay, cost, stress and other burdens often associated with litigation. Mediation, in particular, allows parties more active involvement in determining the resolution of their disputes without sacrificing the quality of justice to be rendered or the right of the litigants to a full trial on all issues not resolved through mediation.

Mediation is a process in which an impartial person, the mediator, facilitates communication

between disputing parties and counsel to promote understanding, reconciliation and settlement. Mediation enables litigants to take control of their dispute and encourages amicable resolutions.

The mediator may, among other things, suggest alternatives, analyze issues, question perceptions, use logic, conduct private caucuses and stimulate negotiations between opposing sides. The mediator is an advocate for settlement and uses the mediation process to ensure that the parties fully explore all areas of agreement. The mediator does not serve as a judge or arbitrator and has no authority to render decisions on questions of fact or law or to force settlements.

## **2.0 ASSIGNMENT OF MATTERS TO MEDIATION**

A matter may be assigned to mediation only by order of the Court ("Order of Assignment"). Upon motion of a party to the matter or the United States trustee, written stipulation, or by *sua sponte* order the court may assign to mediation any dispute arising in an adversary proceeding, contested matter or otherwise in a bankruptcy case. Federal Rules of Bankruptcy Procedure 7016 hereby is made applicable to all matters in which mediation is requested.

## **3.0 EFFECT OF MEDIATION ON PENDING MATTERS**

The assignment of a matter to mediation does not relieve the parties to that matter from complying with any other court orders or applicable provisions of the United States Code, the Federal Rules of Bankruptcy Procedure, or the local rules of this court. Unless otherwise ordered by the court, the assignment to mediation does not delay or stay discovery, pretrial, hearing dates, or trial schedules.

## **4.0 THE MEDIATOR**

### **4.1 Registration of Mediators/Mediation Administrator**

The clerk of the court shall establish and maintain a register of persons (the "Panel") qualified under this section and designated by the court to serve as mediators in the Mediation Program.

### **4.2 Application and Certification of Mediators**

#### **4.2.1 Application and Qualification Requirements**

Each applicant shall submit to the Mediation Administrator a statement of professional qualifications, experience, training, and other information demonstrating, in the applicant's opinion, why the applicant should be designated to the Panel. The applicant shall have completed eight hours of formal mediation training. The applicant shall submit the statement in the form attached hereto as Form A. The statement also shall set forth whether the applicant has been removed from any

professional organization, or has resigned from any professional organization while an investigation into allegations of professional misconduct was pending, and the circumstances of such removal or resignation. This statement shall constitute an application for designation to the Mediation Program.

#### **4.2.2 Court Certification**

The court in its sole discretion shall grant or deny an application submitted pursuant to subsection 4.2.1 of this rule. If the court grants the application, the applicant's name shall be added to the Panel, subject to removal pursuant to section 4.4 of this rule.

#### **4.2.3 Reaffirmation of Qualifications**

Each applicant accepted for designation to the Panel shall reaffirm annually the continued existence and accuracy of the qualifications, statements and representations made in the application. Failure to comply with this section shall be grounds for removal under section 4.4.

#### **4.3 Mediator's Oath or Affirmation**

Upon appointment to the Panel or selection as a mediator, every mediator must sign a written oath or affirmation (see 28 U.S.C. §453), as if the person were a judge, and file the oath or affirmation with the Mediation Administrator.

#### **4.4 Ethical Standards for Mediators**

All mediators shall adhere to the Standards of Conduct for Mediators as promulgated by the American Arbitration Association ("AAA standards"). A failure to adhere to the AAA standards may constitute sufficient cause for the removal from the Panel. Such failure will not void any consensual agreement between the parties unless both parties consent to the rescission of the agreement or, on motion of any party to the mediation or, *sua sponte*, the court finds that the mediator's conflict of interest or failure to abide by the AAA standards caused actual prejudice to a party.

#### **4.5 Removal from Panel**

A person shall be removed from the Panel either at the person's written request to the Mediation Administrator or by court order for cause. If removed by court order, the person shall not be returned to the Panel absent a court order obtained on motion to the Mediation Administrator supported by an affidavit sufficiently explaining the circumstances of such removal and the reasons justifying the return of the person to the Panel.

### **5.0 APPOINTMENT OF MEDIATOR**

#### **5.1.1 Selection by Parties**

Within 15 calendar days of the date of service of the Order of Assignment of a matter to mediation, the parties to the matter to be mediated shall select a mediator, and an alternate mediator, and shall present the court with a proposed order of appointment. If such selection is not from the Panel, the parties shall submit with the proposed order of appointment a stipulation by the parties that the person is not on the Panel but is qualified to mediate the matter. If the court approves the parties' selection, immediately after entry of the order of appointment, the court shall notify the parties, the mediator and the alternate mediator of the appointment.

### **5.1.2 Selection/Appointment by Court**

If the parties cannot agree upon a mediator within 15 calendar days of the date of service of the Order of Assignment, the court shall appoint a mediator and an alternate mediator from the Panel and shall notify the parties, the mediator, and the alternate mediator of such appointment.

### **5.2.1 Inability of Mediator to Serve**

If the mediator is unable to serve due to a conflict or other reason precluding acceptance of the appointment, the mediator shall file and serve on all parties to the mediation and on the alternate mediator, within five calendar days after receipt of the notice of appointment, a notice of inability to accept the appointment. The alternate mediator then shall become the mediator if the alternate does not file and serve on all parties to the mediation a notice of inability to accept the appointment within five calendar days after receipt of the original mediator's notice of inability to accept the appointment. If neither the mediator nor the alternate mediator can serve, the court shall appoint another mediator and alternate mediator.

### **5.2.2 Mediator's Prior Service**

A mediator has the option of declining to accept the mediation based on having served as a mediator on four previous occasions within a period of one year.

## **5.3 Disqualification of Mediator**

### **5.3.1 Disqualifying Events**

Any person selected as a mediator may be disqualified for bias or prejudice in the same manner that a judge may be disqualified under 28 U.S.C. §144. Any person selected as a mediator shall be disqualified in any matter where 28 U.S.C. §455 would require disqualification if that person were a judge. Any member of the bar who is certified and designated as a mediator pursuant to this rule shall not solely for that reason be disqualified from appearing or acting as counsel in any other matter or case pending before this court.

### **5.3.2 Inquiry by Mediator; Disclosure**

Promptly after receiving notice of appointment, the mediator shall make inquiry sufficient



to determine whether there is a basis for disqualification under subsection 5.3.1 of this rule. The inquiry shall include, but shall not be limited to, a search for conflicts of interest in the manner prescribed by the applicable rules of professional conduct for attorney mediators, and by the applicable rules pertaining to the mediator's profession for non-attorney mediators. Within seven calendar days after receiving notice of appointment, the mediator shall file with the court and serve on the parties to the mediation either (a) a statement that there is no basis for disqualification under subsection 5.3.1 and that the mediator has no actual or potential conflict of interest or (b) a notice of withdrawal.

### **5.3.3 Objection Based on Conflict of Interest**

A party to the mediation who believes that the assigned mediator and/or the alternate mediator has a conflict of interest promptly shall bring the issue to the attention of the mediator and/or the alternate mediator, as applicable, and to other parties to the mediation. If the mediator does not withdraw, the issue shall be brought to the court's attention by the mediator or any of the parties to the mediation. The court shall take such action as the court deems necessary or appropriate to resolve the alleged conflict of interest.

### **5.4 Mediator's Liability**

There shall be no liability on the part of, and no cause of action shall arise against, any person who is appointed as a mediator pursuant to this rule on account of any act or omission in the course and scope of such person's duties as a mediator. *See e.g. Wagshal v. Foster*, 28 F.3d 1249 (D.C. Cir. 1994).

## **6.0 COMPENSATION**

### **6.1 Compensation of Mediator**

The mediator shall serve on a *pro bono* basis and shall not require compensation or reimbursement of expenses. It is anticipated that the mediation shall not exceed six hours in length. If, at the conclusion of the six hours of mediation, it is determined by the mediator and the parties to the mediation that additional time will be necessary and productive in order to complete the mediation, then:

- (1) If the mediator consents to continue to serve on a *pro bono* basis, the parties to the mediation may agree to continue the mediation conference; or
- (2) If the mediator does not consent to continue to serve on a *pro bono* basis, the mediator's fees and expenses shall be on such terms as are satisfactory to the mediator and the parties to the mediation, subject to prior court approval if the estate is to be charged. The parties to the mediation shall share equally all mediation fees and expenses unless the parties to the mediation agree otherwise. The court may,

in the interest of justice, determine a different allocation. In no case will compensation exceed an hourly rate of \$150 per hour.

## **7.0 THE MEDIATION**

### **7.1 Time and Place of Mediation Conference**

After consulting with all counsel and *pro se* parties, the mediator shall schedule a convenient time and place for the mediation conference, and promptly give all counsel and *pro se* parties at least 14 calendar days' written notice of the time and place of the mediation conference. The mediator shall schedule the mediation to begin as soon as practicable.

### **7.2 Submission Materials**

Not less than seven calendar days before the mediation conference, each party shall submit directly to the mediator, and serve on all counsel and *pro se* parties, any materials (the "Submission") the mediator directs to be prepared and assembled. The mediator shall so direct not less than 14 calendar days before the mediation conference. Prior to the mediation conference, the mediator may talk with the participants to determine what materials would be helpful. The Submissions shall not be filed with the court and the court shall not have access to them.

### **7.3 Attendance at Mediation Conference**

#### **7.3.1 Persons Required to Attend**

The following persons personally must attend the mediation conference:

- (1) Each party that is a natural person;
- (2) If the party is not a natural person, a representative who is not the party's attorney of record and who has full authority to negotiate and settle the matter on behalf of the party;
- (3) If the party is a governmental entity that requires settlement approval by an elected official or legislative body, a representative who has authority to recommend a settlement to the elected official or legislative body;
- (4) The attorney who has primary responsibility for each party's case; and
- (5) Other interested parties such as insurers or indemnitors, or one or more of their representatives, whose presence is necessary for a full resolution of the matter assigned to mediation.

### **7.3.2 Excuse**

A person required to attend the mediation is excused from appearing if all parties and the mediator agree that the person need not attend. The court for cause may excuse a person's attendance.

### **7.3.3 Failure to Attend**

Willful failure to attend any mediation conference, and any other material violation of this rule, shall be reported to the court by the mediator and may result in the imposition of sanctions by the court. Any such report of the mediator shall comply with the confidentiality requirements of section 8.1 of this rule.

## **7.4 Mediation Conference Procedures**

The mediator may establish procedures for the mediation conference.

## **8.0 CONFIDENTIALITY OF MEDIATION PROCEEDINGS**

### **8.1 Protection of Information Disclosed at Mediation**

The mediator and the participants in mediation are prohibited from divulging, outside of the mediation, any oral or written information disclosed by the parties or by witnesses in the course of the mediation. No person may rely on or introduce as evidence in any arbitral, judicial, or other proceedings, evidence pertaining to any aspect of the mediation effort, including but not limited to: (a) views expressed or suggestions made by a party with respect to a possible settlement of the dispute; (b) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; (c) proposals made or views expressed by the mediator; (d) statements or admissions made by a party in the course of the mediation; and (e) documents prepared for the purpose of, in the course of, or pursuant to the mediation. In addition, without limiting the foregoing, Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule, common law or judicial precedent relating to the privileged nature of settlement discussions, mediation or other alternative dispute resolution procedure shall apply. Information otherwise discoverable or admissible in evidence, however, does not become exempt from discovery, or inadmissible in evidence, merely by being used by a party in a mediation.

### **8.2 Discovery from Mediator**

The mediator shall not be compelled to disclose to the court or to any person outside the mediation conference any of the records, reports, summaries, notes, communications, or other documents received or made by a mediator while serving in such capacity. The mediator shall not testify or be compelled to testify in regard to the mediation in connection with any arbitral, judicial or other proceeding. The mediator shall not be a necessary party in any proceedings relating to the mediation. Nothing contained in this section shall prevent the mediator from reporting the status,

but not the substance, of the mediation effort to the court in writing, from filing a report as required by section 9.1, or from complying with the obligations set forth in section 10.

### **8.3 Protection of Proprietary Information**

The parties, the mediator, and all mediation participants shall protect proprietary information during and after the mediation conference.

### **8.4 Preservation of Privileges**

The disclosure by a party of privileged information to the mediator does not waive or otherwise adversely affect the privileged nature of the information.

## **9.0 RECOMMENDATIONS BY MEDIATOR**

The mediator is not required to prepare written comments or recommendations to the parties. Mediators may present a written settlement recommendation memorandum to attorneys or *pro se* litigants, but not to the court.

## **10.0 POST MEDIATION PROCEDURES**

### **10.1 Preparation of Orders**

If a settlement is reached at a mediation, a party designated by the mediator shall submit a fully executed stipulation and proposed order to the court within twenty calendar days after the end of the mediation. If the party fails to prepare the stipulation and order, the court may impose appropriate sanctions.

### **10.2 Mediator's Certificate of Completion**

Promptly after the mediation conference, the mediator shall file with the court, and serve on the parties and the Mediation Administrator, a certificate in the form provided by the court showing compliance or noncompliance with the mediation conference requirements of this rule and whether or not a settlement has been reached. Regardless of the outcome of the mediation conference, the mediator shall not provide the court with any details of the substance of the conference.

### **10.3 Mediator's Report**

In order to assist the Mediation Administrator in compiling useful data to evaluate the Mediation Program, and to aid the court in assessing the efforts of the members of the Panel, the mediator shall provide the Mediation Administrator with an estimate of the number of hours spent in the mediation conference and other statistical and evaluative information on a form provided by the court. The mediator shall provide this report whether or not the mediation conference results in settlement.

## **11.0 WITHDRAWAL FROM MEDIATION**

Any matter assigned to mediation pursuant to this rule may be withdrawn from mediation by the court at any time upon determination that the matter is not suitable for mediation. In addition, where mediation is brought about either by *sua sponte* order or motion, a party may withdraw from the mediation at any time after attending the first scheduled mediation conference only upon notice and motion. In order to withdraw, the withdrawing party shall, no later than five business days prior to any subsequently scheduled mediation activity, file with the court a motion seeking to withdraw from the mediation, briefly stating the reasons for the request and serve on the Mediator Administrator, mediator and other parties (or their counsel). The method of service of the motion for withdrawal shall provide for actual receipt by the parties and the mediator no later than three business days prior to the next scheduled mediation activity. The court shall rule upon the motion without argument. All mediation activity shall be stayed pending an order from the court.

## **12.0 TERMINATION OF MEDIATION**

Upon the filing of a mediator's certificate pursuant to section 10.2 or the entry of an order withdrawing a matter from mediation pursuant to section 11.0, the mediation will be deemed terminated, and the mediator excused and relieved from further responsibilities in the matter without further court order. If the mediation conference does not result in a resolution of all of the disputes in the assigned matter, the matter shall proceed to trial or hearing pursuant to the court's scheduling order.

## **13.0 REEVALUATION/REVISION PROCEDURE**

The purpose and administration of this rule shall be reviewed and reevaluated at such time and in such manner as the court deems appropriate.